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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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FERIDON N. DIZADJI,
Plaintiff,
v.

NO. CIV. S-09-3047 FCD/DAD
ORDER

DEUTSCHE BANK NATIONAL TRUST
COMPANY, SUN TRUST MORTGAGE,
INC., and DOES 1 to 100
inclusive,
Defendants.

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This matter is before the court on the motions of defendants Deutsche Bank National Trust Company and SunTrust Mortgage, Inc. to dismiss plaintiff Feridon N. Dizadji's ("plaintiff") complaint pursuant to Federal Rule of Civil Procedure ("FRCP") 12(b)(6). Jurisdiction is a threshold inquiry before the adjudication of any case before the court. See Morongo Band of Mission Indians v. Cal. State Bd. of Equalization, 858 F.2d 1376, 1380 (9th Cir. 1988). The court has reviewed defendants' notice of removal to the United States District Court for the Eastern District of California under 28 U.S.C. § 1441(b) based on federal question

1 jurisdiction. The court finds that the underlying complaint,
2 alleging causes of action for (1) rescission or reformation of
3 contract, (2) fraud, (3) specific performance, (4) wrongful
4 foreclosure, (5) wrongful eviction, (6) quiet title, and (7)
5 civil conspiracy, does not present a federal question and is
6 therefore improperly before this court.¹ Accordingly, the court
7 REMANDS this action back to the Superior Court of California,
8 County of Solano.

9 IT IS SO ORDERED.

10 DATED: March 2, 2010



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12 FRANK C. DAMRELL, JR.
13 UNITED STATES DISTRICT JUDGE
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22 ¹ Plaintiff's third claim for relief seeks specific
23 performance to modify plaintiff's home mortgage loan. This is,
24 in essence, a contract remedy. Plaintiff does, in part, base
25 this claim on the Hope for Homeowners' Act and the Emergency
26 Economic Stabilization Act of 2008-both federal statutes.
27 However, "[w]hen a claim can be supported by alternative and
28 independent theories - one of which is a state law theory and one
of which is a federal law theory - federal question jurisdiction
does not attach because federal law is not a necessary element of
the claim." Rains v. Criterion Sys., Inc., 80 F.3d 339, 345 (9th
Cir. 1996). Plaintiff's claim is also predicated upon California
Civil Code § 2923.6, thus providing an alternative theory for
relief and barring federal question jurisdiction.