

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD GIVENS,

Case No. 2:09-CV-3269-JAM-KJM

Plaintiff,

REMAND ORDER

v.

PARAMOUNT MORTGAGE; SAXON  
MORTGAGE; CAL WESTERN  
RECOVEYANCE CORP.; and DOES 1-  
50, inclusive,  
Defendants.

---

This matter comes before the Court on Defendant Saxon  
Mortgage Services, Inc.'s ("Defendant's") Motion to Dismiss  
Plaintiff Richard Givens' ("Plaintiff's") Complaint for failure  
to state a claim pursuant to Federal Rule of Civil Procedure  
12(b)(6). Plaintiff opposes the motion.<sup>1</sup> For the reasons set

---

<sup>1</sup> This motion was determined to be suitable for decision without  
oral argument. E.D. Cal. L.R. 230(g).

1 forth below, this Court does not have jurisdiction over this  
2 case and must remand this action to state court.

3  
4  
5 I. OPINION

6 This case was removed on November 23, 2009, from Sacramento  
7 County Superior Court by Defendant under 28 U.S.C. § 1441, based  
8 solely on federal question jurisdiction. Jurisdiction is a  
9 threshold inquiry before the adjudication of any case before a  
10 court, see Morongo Band of Mission Indians v. Cal. State Bd. of  
11 Equalization, 858 F.2d 1376, 1380 (9th Cir. 1988), and a court  
12 "ha[s] an independent obligation to address sua sponte whether  
13 [it] has subject-matter jurisdiction." Dittman v. California,  
14 191 F.3d 1020, 1025 (9th Cir.1999); accord Grupo Dataflux v.  
15 Atlas Global Group, L.P., 541 U.S. 567, 593, 124 S.Ct. 1920,  
16 1937, 158 L.Ed.2d 866 (2004) (citations omitted) ("[I]t is the  
17 obligation of [the] district court . . . to be alert to  
18 jurisdictional requirements."). Without jurisdiction, this Court  
19 cannot decide the merits of this case or order any relief. See  
20 Morongo, 858 F.2d at 1380.

21  
22  
23  
24 It is well settled that if a complaint contains only state  
25 law causes of action, "original federal jurisdiction is  
26 unavailable unless it appears that some substantial, disputed  
27 question of federal law is a necessary element of one of the  
28 well-pleaded state claims, or that one or the other claim is

1 'really' one of federal law." Morongo, 858 F.2d at 1383 (citing  
2 Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Trust for  
3 S. Cal., 463 U.S. 1, 13 (1983)). Indeed, passing references to  
4 federal statutes do not create a substantial federal question.  
5 Lippit v. Raymond James Fin. Servs., Inc., 340 F.3d 1033, 1040-  
6 41 (9th Cir. 2003); see also Rains v. Criterion Sys. Inc., 80  
7 F.3d 339, 344 (9th Cir. 1996) (references to Title VII are  
8 insufficient to establish federal jurisdiction in a wrongful  
9 termination action). "When a claim can be supported by  
10 alternative and independent theories - one of which is a state  
11 law theory and one of which is a federal law theory - federal  
12 question jurisdiction does not attach because federal law is not  
13 a necessary element of the claim." Rains, 80 F.3d at 339; see  
14 also Lippit, 340 F.3d at 1043.

15  
16  
17  
18 Plaintiff's pro se complaint contains three causes of  
19 action: fraud, injunctive relief, and reformation of contract.  
20 Defendant removed the case, arguing that Plaintiff asserts a  
21 cause of action for a violation of a federal statute, the  
22 Federal Trade Commission Act, 15 U.S.C. § 45(a). Plaintiff's  
23 complaint, under the "Second Cause of Action, Complaint for  
24 Injunctive Relief" alleges that Plaintiff "submitt[ed] to the  
25 Defendant Saxon Mortgage an Official Qualified Written Request  
26 [( "QWR" )] under FDIC-UNFAIR OR DECEPTIVE TRADE PRACTICE FDIC 15  
27 USC 45(a) FTC Act Section 5 . . . ." Plaintiff merely mentions  
28

1 the submission of the QWR as part of the actions taken by  
2 Plaintiff in dealing with the possibility of default. More  
3 importantly, 15 U.S.C. § 45(a) does not provide a private cause  
4 of action for a failure to respond to a QWR. Indeed, this  
5 statute has nothing to do with the issues in this case and  
6 cannot, therefore, be a valid basis for relief in this Court.  
7 See 15 U.S.C. § 18(f) (providing that preliminary injunctions,  
8 alleging violations of section 45 of this act, are filed by the  
9 Federal Trade Commission or by the United States). It is clear  
10 that Plaintiff's claim for injunctive relief does not rely  
11 solely on violations of federal law and resolution of a federal  
12 issue is not essential.

13  
14  
15 Plaintiff is now represented by an attorney, and  
16 Plaintiff's attorney filed an opposition to the motion to  
17 dismiss. The opposition does not reference any federal statutes  
18 or federal claims, further demonstrating that this case involves  
19 only state law.  
20

21 II. ORDER

22 Because the Court does not have federal question  
23 jurisdiction over Plaintiff's claims, the Court REMANDS this  
24

25 //

26 //

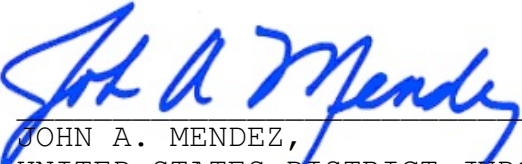
27 //

1 action back to the Superior Court of California, County of  
2 Sacramento.

3 The Clerk shall close this case and enter judgment.  
4

5  
6 IT IS SO ORDERED.

7  
8 Dated: May 5, 2010

9   
10 \_\_\_\_\_  
11 JOHN A. MENDEZ,  
12 UNITED STATES DISTRICT JUDGE  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28