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

NIKOLAY MARTYNOV and TATYANA)
MARTYNOV,)
)
Plaintiffs,)
)
v.)
COUNTRYWIDE FINANCIAL CORPORATION,)
et al.,)
)
Defendants.)
_____)

2:09-cv-03596-GEB-GGH
ORDER REMANDING CASE
TO STATE COURT

Defendants removed this case from Placer County Superior Court in California on December 29, 2009, based on the following argument in their Notice of Removal: "This action . . . may be removed . . . in that Plaintiffs' state-law claims allege violations arising from the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601, et seq., its corresponding Regulation Z, 12 C.F.R. Part 226, and the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2601, et seq., and its corresponding Regulation X, 24 C.F.R. 3500, et seq. Interpretation of the federal right is thus necessary to resolve this case." (Notice of Removal ¶ 12.) Plaintiffs allege in their complaint thirteen causes of action against Defendants, all of which

1 concern a foreclosure proceeding involving Plaintiffs' residence.
2 Review of the complaint reveals that Defendants only assert
3 Plaintiffs' first and third causes of action are the bases for
4 removal. However, since it is evident that there is no substantial
5 federal question in Plaintiffs' complaint, this case will be remanded
6 to Placer County Superior Court for lack of subject matter
7 jurisdiction.

8 I. LEGAL STANDARD

9 "Ordinarily, the existence of federal question jurisdiction
10 is determined from the face of the complaint. Whether the complaint
11 states a claim 'arising under' federal law must be ascertained by the
12 legal construction of the plaintiff's allegations, and not by the
13 effect attributed to those allegations by the adverse party.

14 [P]laintiff[s] [are] the 'master' of [their] complaint[.]” Ultramar
15 Am. Ltd. v. Dwell, 900 F.2d 1412, 1414 (9th Cir. 1990) (citations and
16 quotations omitted). "Claims brought under state law may 'arise
17 under' federal law if vindication of the state right necessarily turns
18 upon construction of a substantial question of federal law, i.e., if
19 federal law is a necessary element of one of the well-pleaded claims."
20 Id.

21 "[A] case arises under . . . [federal law when] a right
22 . . . created by [federal law is] an element, and an essential one, of
23 the plaintiff's cause of action." Int'l Union of Operating Eng'rs v.
24 County of Plumas, 559 F.3d 1041, 1044 (9th Cir. 2009) (quoting Gully
25 v. First Nat'l Bank, 299 U.S. 109, 112-13 (1936)). Specifically, a
26 state-law claim presents a federal question when it "necessarily
27 raise[s] a stated federal issue, [which is] actually disputed and
28 substantial" Grable & Sons Metal Prod., Inc. v. Darue Eng'g &

1 Mfg., 545 U.S. 308, 314 (2005). “‘Arising under’ federal jurisdiction
2 only arises, then, when the federal law does more than just shape a
3 court’s interpretation of state law; the federal law must be at
4 issue.” Int’l Union of Operating Eng’rs, 559 F.3d at 1045 (emphasis
5 in original). In addition, “[w]hen a claim can be supported by
6 alternative and independent theories—one of which is a state law
7 theory and one of which is a federal law theory—federal question
8 jurisdiction does not attach because federal law is not a necessary
9 element of the claim.” Rains v. Criterion Sys., Inc., 80 F.3d 339,
10 346 (9th Cir. 1996); see also Cortes v. Bank of Am., N.A., No. CV 09-
11 7457 AHM (FFMx), 2009 WL 4048861, *2 (C.D. Cal. Nov. 20, 2009)
12 (remanding case after finding that references to TILA violations in
13 claim for violation of § 17200 do not present claims that “arise
14 under” federal law); California v. H & R Block, Inc., No. C 06-2058
15 SC, 2006 WL 2669045, *4 (N.D. Cal. Sept. 18, 2006) (remanding case
16 after finding that incorporation of TILA violation into claim for
17 violation of § 17200 does not “arise under” federal law).

18 **II. ANALYSIS**

19 Defendants’ Notice of Removal reveals Defendants rely on
20 Plaintiffs’ first and third causes of action as the basis for removal,
21 based on Defendants argument that these claims necessarily require
22 interpretation of TILA and RESPA. Specifically, Defendants rely on
23 paragraphs 9, 41, and 62. Paragraph 9 is under the heading,
24 “Background and Parties.” Plaintiffs allege in paragraph 9,
25 “Defendants . . . are and were subject to and must comply with [TILA]
26 and [RESPA].” (Compl. ¶ 9.) Paragraph 41 is under the heading,
27 “First Cause of Action - Breach of Covenant of Good Faith and Fair
28 Dealing.” Plaintiffs allege in paragraph 41, “Defendants willfully

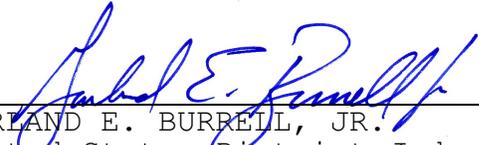
1 breached their implied covenant of good faith and fair dealing with
2 Plaintiffs when Defendants . . . [f]ailed to provide all the proper
3 disclosures" (Compl. ¶ 41.) Paragraph 62 is under the
4 heading, "Third Cause of Action - Violation of California's Unfair
5 Competition Law [("UCL")], Bus. & Prof. Code § 17200 *et. seq.*"
6 Plaintiffs allege in paragraph 62, "the conduct of Defendants . . .
7 threatens an incipient violation of various consumer protection
8 statutes, or which violate the policy and spirit of such laws,
9 including [several California statutes] and [TILA]." (Compl. ¶ 62.)
10 The remaining allegations in Plaintiffs' first and third "causes of
11 action" are couched in terms of California UCL and breach of the
12 implied covenant of good faith and fair dealing claims, and do not
13 mention RESPA or TILA. Further, Plaintiffs do not seek in their
14 prayer for relief rescission under TILA, statutory damages and
15 attorneys' fees under RESPA, or any other specific relief under either
16 statute. Construing Plaintiffs' first and third causes of action
17 under the well-pleaded complaint rule, "this court cannot say that
18 [Plaintiffs'] right to relief necessarily depends upon construction of
19 a substantial question of any federal law." Ultramar Am., 900 F.2d at
20 1414.

21 Additionally, a violation of TILA and RESPA is not a
22 "necessary element of the [state] claim[s]" since Plaintiffs also
23 allege "alternative and independent theories-[several] of which [are]
24 state-law theor[ies]" to attempt to prove the portion of their claims
25 that reference TILA and RESPA. Rains, 80 F.3d at 346. Thus, in light
26 of the alternative ways Plaintiffs have to attempt to prove their
27 first and third claims, "[t]here is no 'basic' or 'pivotal' federal
28 question that impinges on [their] right to relief." Lippitt, 340 F.3d

1 at 1046. Therefore, Plaintiffs' claims do not "arise under" federal
2 law and this Court lacks subject matter jurisdiction over the action.

3 For the stated reasons, this case is remanded to the Placer
4 County Superior Court in California.

5 Dated: April 20, 2010

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9 GARLAND E. BURRELL, JR.
10 United States District Judge
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