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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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JANICE GUISIHAN,  
Plaintiff,

NO. CIV. 2:10-111 WBS GGH

v.

ORDER

COMMUNITY RESIDENTIAL  
MORTGAGE, INC.; MORTGAGEIT,  
INC.; WELLS FARGO BANK, N.A.;  
AMERICA'S SERVICING COMPANY;  
NDEX WEST LLC.; HSBC BANK USA,  
N.A., AS TRUSTEES FOR  
MORTGAGEIT SECURITIES CORP.  
MORTGAGE LOAN TRUST, SERIES  
2007-1, MORTGAGE PASS-THROUGH  
CERTIFICATES and DOES 1  
through 50, inclusive,,

Defendants.

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On January 14, 2010, defendant MortgageIT, Inc. removed  
the action to this court, invoking the court's federal question  
jurisdiction, 28 U.S.C. § 1331, based upon the fact that  
plaintiffs' claim under California's Unfair Competition Law  
("UCL"), Cal. Bus. & Prof. Code §§ 17200-17210, alleges, inter  
alia, violations of the Real Estate Settlement Procedures Act

1 ("RESPA"), 12 U.S.C. §§ 2601-2617, the Equal Credit Opportunity  
2 Act ("ECOA"), 15 U.S.C. §§ 1691-1691f, and the Truth in Lending  
3 Act ("TILA"), 15 U.S.C. §§ 1601-1667f. (Notice of Removal  
4 (Docket No. 1) ¶ 3.)

5 Plaintiff's complaint does not assert any federal  
6 causes of action, although the UCL claim does allege violations  
7 of three federal statutes. It is a "long-settled understanding  
8 that the mere presence of a federal issue in a state cause of  
9 action does not automatically confer federal-question  
10 jurisdiction." Lippitt v. Raymond James Fin. Servs., 340 F.3d  
11 1033, 1040 (9th Cir. 2003) (quoting Merrell Dow Pharm., Inc. v.  
12 Thompson, 478 U.S. 804, 808 (1986)). Instead, the federal  
13 question must be "a necessary element of the well-pleaded state  
14 claim" or the plaintiff's right to relief must rely on the  
15 resolution of a substantial, disputed question of federal law.  
16 Lippitt, 340 F.3d at 1042.


17 Plaintiff's UCL claim does not require proof of a  
18 violation of RESPA, TILA, or the ECOA. Rather, plaintiff only  
19 needs to show that defendants engaged in a business practice that  
20 was unlawful or "unfair" because it offends an established public  
21 policy, is immoral, unethical, oppressive, injurious to  
22 customers, or unscrupulous. Wilmer v. Sunset Life Ins., 78 Cal.  
23 App. 4th 952, 964 (2000); People v. Casa Blanca Convalescent  
24 Homes, Inc., 159 Cal. App. 3d 509, 530 (1984). Since plaintiff  
25 can prove all her claims independently under state law, an  
26 application of federal law is not a substantial or "necessary  
27 element" of the claims. See Fardella v. Downey Sav. & Loan  
28 Ass'n, No. 00-4394, 2001 WL 492442, at \*3 (N.D. Cal. May 9, 2001)

1 (finding no federal question jurisdiction because plaintiff could  
2 prove allegedly unfair broker rebate violated California law  
3 independently of RESPA or TILA).

4 IT IS THEREFORE ORDERED that within ten days of the  
5 date of this Order, the parties shall file briefs to show cause  
6 why this action should not be remanded to state court.

7 IT IS FURTHER ORDERED that defendants' pending motions  
8 to dismiss and strike are taken under submission without the  
9 necessity of oral argument.

10 DATED: February 25, 2010

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12 WILLIAM B. SHUBB  
13 UNITED STATES DISTRICT JUDGE  
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