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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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RISA F. DALEY,

NO. 2:10-cv-2531 FCD KJN

Plaintiff,

v.

ORDER

MORTGAGEIT, INC.; GMAC
MORTGAGE, LLC; KATIE SPIERS;
DEBORAH A. GORDON; SEVEN HILLS
PROPERTIES f/k/a WINDSOR
CAPITAL CORPORATION; and DOES
1-20 inclusive,

Defendants.

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The court has reviewed defendant MortgageIT, Inc.'s amended 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 jurisdiction. The court finds that the underlying complaint, alleging causes of action for (1) fraud and deceit, (2) negligent misrepresentation, (3) breach of fiduciary duty, (4) aiding and abetting, (5) breach of contract, (6) tortious interference with contractual relations, (7) negligence,

1 and (8) wrongful foreclosure does not present a federal question
2 and is therefore improperly before this court.

3 "The presence or absence of federal question jurisdiction is
4 governed by the 'well-pleaded complaint rule,' which provides
5 that federal jurisdiction exists only when a federal question is
6 presented on the face of the plaintiff's properly pleaded
7 complaint." Sacramento Metropolitan Air Quality Management Dist.
8 v. United States, 215 F.3d 1005, 1014 (9th Cir. 2000). Federal
9 jurisdiction may also lie if "it appears that some substantial
10 disputed question of federal law is a necessary element of one of
11 the well-pleaded state claims." Rains v. Criterion Sys., Inc.,
12 80 F.3d 339, 345 (9th Cir. 1996) (quoting Franchise Tax Bd. of
13 California v. Construction Laborers Vacation Trust for Southern
14 California, 463 U.S. 1, 13 (1983). However, "[w]hen a claim can
15 be supported by alternative and independent theories - one of
16 which is a state law theory and one of which is a federal law
17 theory - federal question jurisdiction does not attach because
18 federal law is not a necessary element of the claim." Id.
19 (holding that the plaintiff's wrongful discharge claim did not
20 give rise to federal question jurisdiction because it could be
21 supported by violations of the state law constitution, not only
22 violations of a federal statute); Lippit v. Raymond James Fin.
23 Servs., Inc., 340 F.3d 1033, 1043 (9th Cir. 2003) (holding that
24 California unfair competition law claims did not give rise to
25 federal question jurisdiction because such claims are based on
26 unfair or fraudulent conduct generally, and not necessarily
27 violations of federal rules and regulations); Mulcahey v.
28 Columbia Organic Chemicals, 29 F.3d 148. 153 (4th Cir. 1994)

1 (holding that negligence action alleging violations of local,
2 state, and federal environmental laws did not confer federal
3 question jurisdiction).

4 In this case, plaintiff's claims do not rely solely on
5 violations of federal law. Indeed, while defendant contends that
6 "[p]laintiff's claims should be characterized as federal claims
7 for relief," none of plaintiff's claims are brought pursuant to
8 or even reference federal law. As such, resolution of potential
9 federal issues is not essential, and thus, determination of
10 federal law is not a necessary element of one of the well-pleaded
11 state claims. See Christianson v. Colt Industries Operating
12 Corp., 486 U.S. 800, 810 (1988) ("[A] claim supported by
13 alternative theories in the complaint may not form the basis for
14 [federal] jurisdiction unless [federal] law is essential to each
15 of those theories.").

16 Accordingly, the court REMANDS this action back to the
17 Superior Court of California, County of Yuba.

18 IT IS SO ORDERED.

19 DATED: September 28, 2010



FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE