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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JIM E. MOORE,)	Case No. 08-0350 SC
)	
Plaintiff,)	
)	ORDER DENYING
v.)	PLAINTIFF'S MOTION TO
)	<u>REMAND</u>
CHASE BANK; BNC MORTGAGE, INC.;)	
NDEX West LLC; STIRLING FUNDING)	
CORPORATION; KEVIN CAYLOR; and DOES)	
1-20,)	
)	
Defendants.)	
_____)	

I. INTRODUCTION

This matter comes before the Court on the Ex Parte Motion to Remand ("Motion") filed by Plaintiff Jim Moore. See Docket No. 4. The defendant BNC Mortgage ("BNC") filed an Opposition and Plaintiff submitted a Reply. See Docket Nos. 7, 8. For the following reasons, the Court DENIES Plaintiff's Motion to Remand.

II. BACKGROUND

The present action arises out of Plaintiff's September 2004 refinancing of his home loan with Defendants. On January 4, 2007, Plaintiff filed a Complaint in the Superior Court of the State of California for Contra Costa County, alleging six causes of action: (1) declaratory judgment for violations of California Civil Code § 2924 et. seq, which establishes protections and procedures for valid foreclosure sales; (2) unfair business practices under

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1 California Business and Professions Code § 17200; (3) fraud,
2 pursuant to California Civil Code § 1572; (4) unconscionability;
3 (5) breach of contract; and (6) accounting. In addition,
4 Plaintiff obtained a temporary restraining order from the state
5 superior court prohibiting the foreclosure sale of his home. Mot.
6 at 2. Defendants subsequently filed a timely notice for removal,
7 see Docket No. 1, and Plaintiff filed the present Motion to
8 Remand.

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10 **III. DISCUSSION**

11 "The burden of establishing federal jurisdiction is upon the
12 party seeking removal . . . and the removal statute is strictly
13 construed against removal jurisdiction." Emrich v. Touche Ross &
14 Co., 846 F.2d 1190, 1194-95 (9th Cir. 1988) (internal citations
15 omitted). "Federal jurisdiction must be rejected if there is any
16 doubt as to the right of removal in the first instance." Gaus v.
17 Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992).

18 Ordinarily, "federal jurisdiction exists only when a federal
19 question is presented on the face of the plaintiff's properly
20 pleaded complaint." Caterpillar Inc. v. Williams, 482 U.S. 386,
21 392 (1987). Thus, "the plaintiff [is] the master of the claim; he
22 or she may avoid federal jurisdiction by exclusive reliance on
23 state law." Id.

24 In the present case, Plaintiff asserts that because the
25 causes of action in his Complaint are all California statutory and
26 common law claims, there is no federal jurisdiction and the case
27 must be remanded to state court. Plaintiff's repeated invocation
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1 of federal law in his Complaint, however, belies the fact that
2 resolution of questions of federal law underpin Plaintiff's
3 claims. "Congress has given the lower federal courts jurisdiction
4 to hear, originally or by removal from state court, only those
5 cases in which a well-pleaded complaint establishes either that
6 federal law creates the cause of action or that the plaintiff's
7 right to relief necessarily depends on resolution of a substantial
8 question of federal law." Franchise Tax Bd. of the State of Cal.
9 v. Constr. Laborers Vacation Trust for S. Cal., 463 U.S. 1, 27-28
10 (1983).

11 In his Complaint, Plaintiff states that Defendants "are
12 subject to and must comply with the Federal Truth in Lending Act
13 (15 U.S.C. §§ 1601-1666j) and with the Act's corresponding
14 Regulation Z (24 C.F.R. §§ 3500.1-3500.17)." Compl. ¶ 6.
15 Plaintiff also alleges that Defendants "are debt collectors . . .
16 as defined by 15 USCA § 1692a(6), the Federal Fair Debt Collection
17 Practices Act," and that Defendants "were at all times alleged in
18 this complaint required to comply with and [sic] the federal Real
19 Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2601-2617."
20 Id. §§ 7, 8. Plaintiff re-alleges these claims with greater
21 specificity in other sections of the Complaint. See Compl. §§ 33-
22 36. In light of Plaintiff's facial invocation of these federal-
23 statute allegations, Plaintiff's argument that he did not "raise
24 any federal issues," Mot. at 3, is plainly contradicted by his own
25 Complaint.

26 In addition, several of Plaintiff's causes of action contain
27 predicate federal statutory violations. For example, in
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1 Plaintiff's second cause of action for unfair business practices,
2 Plaintiff alleges the following:

3 Defendants . . . made the following
4 untrue and misleading statements, and
5 engaged in the following unfair business
6 practices. . . . They failed to comply
7 with the disclosure provisions of the
8 Federal Truth in Lending Act. They
9 failed to comply with the disclosure
10 provisions of the Homeowner Equity
11 Protection Act, a part of the Truth in
12 Lending Act.

13 Compl. ¶ 60. Under this same cause of action, Plaintiff also
14 alleges that various fees demanded by Defendants "are erroneous
15 and fraudulent, and are based on fraudulent representations,
16 violations of the Federal Truth in Lending Act, violations of
17 HOEPA [Home Owners Equity Protection Act], and concealed excessive
18 charges and fees." Id. § 64.

19 In Plaintiff's third cause of action for fraud, Plaintiff
20 alleges the following: "Defendants . . . committed fraud in the
21 following ways. . . . They failed [to] comply with the disclosure
22 provisions of the Homeowner Equity Protection Act, a part of the
23 Truth in Lending Act." Id. § 69. Thus, although Plaintiff has
24 pleaded California state-law causes of action, Plaintiff's
25 decision to include numerous allegations relating to underlying
26 federal statutory violations brings his action within this Court's
27 jurisdiction. Thus, Plaintiff's "right to relief necessarily
28 depends on resolution of a substantial question of federal law."
Franchise Tax Board, 463 U.S. at 27-28.

The Court need not reach the issue of whether any of
Plaintiff's claims are preempted by federal law as federal

1 subject-matter jurisdiction plainly exists by way of Plaintiff's
2 invocation of federal statutory violations. The Court also need
3 not reach the issue of which of Plaintiff's causes of action may
4 be characterized as arising under only state law; it suffices to
5 say that Plaintiff's claims for unfair business practices and
6 fraud both explicitly incorporate federal statutory violations and
7 therefore create federal jurisdiction. At the very least, the
8 remaining claims may remain in federal court based on supplemental
9 jurisdiction. See 28 U.S.C. § 1367.

10 In addition, Plaintiff argues that the statutes of
11 limitations for all of the federal statutes relied on in the
12 Complaint have expired. Even assuming, arguendo, this were so, "a
13 plaintiff should not be permitted to effectuate remand by pointing
14 out the flaws in her own complaint, in effect arguing for
15 dismissal of that claim." Barraclough v. ADP Auto. Claims Servs.,
16 818 F. Supp. 1310, 1312 (N.D. Cal. 1993) (internal quotation marks
17 omitted).

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19 **IV. CONCLUSION**

20 For these reasons, the Court DENIES Plaintiff's Motion to
21 Remand.

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24 IT IS SO ORDERED.

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26 Dated: January 31, 2008



27 UNITED STATES DISTRICT JUDGE

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