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4 IN THE UNITED STATES DISTRICT COURT
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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7 YVONNE ZIVANIC,) Case No. 10-737 SC
8)
9 Plaintiff,) ORDER DENYING MOTION TO
10 v.) REMAND
11)
12 WASHINGTON MUTUAL BANK, F.A.; ERIC)
13 DIPPEL; LISA DIPPEL; JPMORGAN)
14 CHASE BANK, N.A.; DEUTSCHE BANK)
15 NATIONAL TRUST COMPANY; QUALITY)
16 LOAN SERVICE CORPORATION; and DOES)
17 1-50, inclusive,)
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19 Defendants.)
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17 **I. INTRODUCTION**
18 Now before the Court is a Motion to Remand and Request for
19 Attorney's Fees and Costs ("Motion to Remand") filed by Plaintiff
20 Yvonne Zivanic ("Plaintiff" or "Zivanic"). Docket No. 8.¹
21 Defendants JPMorgan Chase Bank, N.A. ("JPMorgan"), and Deutsche
22 Bank ("Deutsche") filed an Opposition. Docket No. 14. Plaintiff
23 did not file a Reply. For the reasons described below, the Court
24 DENIES Plaintiff's Motion to Remand and DENIES Plaintiff's request

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1 for attorney's fees.

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3 **II. BACKGROUND**

4 By this action, Zivanic challenges alleged misconduct that
5 took place during the origination of a housing loan that she used
6 to purchase her current home, during her subsequent efforts to
7 modify that loan, and during the procedures that lead to the recent
8 foreclosure of her home. See Docket No. 1 ("Notice of Removal")
9 Ex. 1 ("Compl.").

10 Zivanic claims that in late 2004, she and her husband began
11 working with Defendants Eric Dippel and Lisa Dippel, who were
12 allegedly employed as brokers/salespersons by Defendant Washington
13 Mutual Bank, F.A. ("WaMu"). Id. ¶¶ 4-5, 16-17. The Dippels were
14 assisting Zivanic in securing finance for the purchase of her
15 current house, which is located in Santa Clara County, California.
16 Id. ¶¶ 1, 3. Zivanic and her husband received a loan for \$885,000
17 pursuant to a Deed of Trust. Id. ¶¶ 19-20. According to the
18 Complaint, the Dippels "led Plaintiff and her husband to believe
19 that she would be approved for a loan with certain terms. However,
20 the NOTE contained a higher interest rate than what had been
21 originally represented to Plaintiff, wrapped unearned fees into
22 Plaintiff's monthly mortgage payment, and contained other less
23 favorable terms." Id. ¶ 22. Zivanic also complains that she and
24 her husband should have never been approved for the loan, because
25 they would be unable to afford the fully amortized payment rates.
26 Id. ¶ 23. The Deed of Trust originally named WaMu as the lender
27 and beneficiary, and California Reconveyance Company was named as
28 the trustee. Id. Ex. A ("DoT") at 1.

1 In early 2008, Zivanic and her husband began experiencing
2 difficulties making their monthly loan payments, and "they began to
3 talk to WAMU representatives regarding forbearance." Compl. ¶ 29.
4 However, Defendants began taking measures to foreclose upon
5 Plaintiff's residence. By an "Assignment of Deed of Trust" dated
6 July 1, 2008 (and recorded on August 15, 2008), WaMu assigned the
7 Deed of Trust to "DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE
8 FOR WAMU 05-AR6 G2." Id. Ex. E ("DoT Assignment") at 1. By a
9 "Substitution of Trustee" dated July 1, 2008 (and recorded on
10 August 27, 2008), Deutsche then designated Defendant Quality Loan
11 Services Corporation ("Quality") as the trustee. Compl. Ex. F
12 ("Substitution of Trustee") at 5-6. On the following day, July 2,
13 2008, Quality filed a Notice of Default and Election to Sell Under
14 Deed of Trust ("Notice of Default") with the recorder for the
15 County of Santa Clara. Compl. ¶ 30, Ex. D.

16 Plaintiff claims that Defendant JPMorgan assumed the WaMu's
17 assets and liability when WaMu went bankrupt in September of 2008.
18 Compl. ¶ 33. In October of 2008, Zivanic and her husband
19 contracted with Amerivest "to assist in negotiating a forbearance
20 plan with WAMU," and on November 19, 2008, she was informed by
21 Gwendolyn Smith "of WMU's Loss Mitigation Department" that they had
22 been approved for a "Special Forbearance Agreement" ("SFA"). Id.
23 ¶ 37, Ex. H. Zivanic and her husband signed the SFA, which
24 required a program entrance fee as well as three debt reduction
25 payments scheduled to take place in late 2008 and early 2009.
26 Compl. ¶¶ 37-38. Zivanic made these payments. Id. ¶ 39.

27 Zivanic and her husband received a letter from WaMu on
28 December 18, 2008, which informed them that their payments would be

1 set at \$3938.64 per month, starting in February of 2009. Id. ¶ 41.
2 However, "[w]hen Mr. Zivanic attempted to make the first payment,
3 he was advised that the letter was sent in error," and after
4 calling his contact at WaMu, he "was told not to pay anything
5 because they had not determined the final loan modification
6 payment." Id. ¶¶ 41-42. Zivanic and her husband continued to work
7 with WaMu to modify their loan, and continued to provide
8 information as requested. Id. ¶¶ 43-44. Nevertheless, on August
9 6, 2009, Quality sold Zivanic's residence to Deutsche at public
10 auction. Id. ¶ 45, Ex. J. Deutsche then filed an unlawful
11 detainer action against Zivanic and her husband on September 21,
12 2009. Compl. ¶ 48. Zivanic apparently still possesses the
13 property, and filed this action in an attempt to retain possession.
14 See id. ¶ 51.

15
16 **III. LEGAL STANDARD**

17 "Federal Courts are courts of limited jurisdiction," and a
18 cause of action is presumed to lie outside of this limited
19 jurisdiction until the party asserting jurisdiction establishes the
20 contrary. Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375,
21 377 (1994). An action that might have originally been brought in
22 federal court is removable to federal court. 28 U.S.C. § 1441(a).
23 A plaintiff may bring a motion to remand to challenge whether the
24 removal procedures were proper. Id. § 1447(c). "The removal
25 statute is strictly construed, and the court must reject federal
26 jurisdiction if there is any doubt as to whether removal was
27 proper. The defendants bear the burden of proving the propriety of
28 removal." Simpson v. Union Pac. R.R. Co., 282 F. Supp. 2d 1151,

1 1153 (N.D. Cal. 2003) (citation omitted).

2
3 **IV. DISCUSSION**

4 None of the Complaint's thirteen causes of action are
5 explicitly framed as federal claims. However, in their Notice of
6 Removal, Defendants refer to the fact that the Complaint makes
7 references to Defendants' alleged violation of the Real Estate
8 Settlement Procedures Act ("RESPA"), 12 U.S.C. §§ 2601 et seq., the
9 Truth in Lending Act ("TILA"), 15 U.S.C. §§ 1601 et seq., and the
10 Equal Credit Opportunity Act ("ECOA"), id. §§ 1691 et seq. See
11 Notice of Removal ¶ 4.

12 Plaintiff claims that she does not list these statutes as
13 grounds for independent causes of action; rather, she argues that
14 they are only included to support her contention that Defendants
15 have violated California's Unfair Competition Law ("UCL"), codified
16 in section 17200 et seq. of the California Business & Professions
17 Code. The UCL forbids "unfair competition" which "include[s] any
18 unlawful, unfair or fraudulent business act or practice"
19 Cal. Bus. & Prof Code §§ 17200, 17203.

20 Plaintiff argues that she is the "master of her complaint" and
21 "has patently declined to state causes of action based on those
22 [TILA, RESPA, and ECOA] violations. Instead, Plaintiff simply
23 mentions those violations in passing." Mot. to Remand at 6. This
24 argument ignores the explicit language of the Complaint itself.
25 Immediately after Plaintiff sets out the basis for her UCL claim,
26 including alleged violations of TILA, RESPA, and ECOA, the
27 Complaint states a demand "for actual, compensatory, statutory,
28 consequential, and punitive damages (in an amount to be proven at

1 trial) in favor of Plaintiff." Compl. ¶¶ 94-97. However, "[a] UCL
2 action is equitable in nature; damages cannot be recovered." In re
3 Tobacco II Cases, 46 Cal. 4th 298, 312 (2009). As Defendants point
4 out, Plaintiff's broad request for damages goes well beyond the
5 scope of remedies authorized by the UCL. Opp'n at 6.

6 While it is true that "there is no 'basic' or 'pivotal'
7 federal question that impinges on [plaintiff's] right to relief"
8 under the UCL, Lippitt v. Raymond James Fin. Servs., Inc., 340 F.3d
9 1033, 1046 (9th Cir. 2003), Plaintiff is not simply bringing a UCL
10 claim that is partially predicated on federal law. Instead, she is
11 seeking remedies that are clearly beyond those authorized by the
12 UCL, and the Complaint is explicitly demanding relief based on
13 several federal statutes. Although Plaintiff's federal claims are
14 not clearly labeled, she is unambiguously requesting remedies that
15 are only available to her under federal law, and she has thereby
16 conferred jurisdiction upon this Court. See Medina v. Ramsey Steel
17 Co., 238 F.3d 674, 680 (5th Cir. 2001) (affirming denial of motion
18 to remand where plaintiff sought remedies authorized by federal law
19 but not available under state law). Although Plaintiff had an
20 opportunity to disclaim any intent to recover under federal law,
21 she failed to take advantage of that opportunity by failing to file
22 a Reply brief.

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V. CONCLUSION

For the reasons stated above, Plaintiff's Motion to Remand is DENIED. Plaintiff's request for attorney's fees is DENIED.

IT IS SO ORDERED.

Dated: May 7, 2010


UNITED STATES DISTRICT JUDGE