

1 of state law. One of these claims alleges a violation of California’s Unfair Competition Law
2 (“UCL”), California Business and Professions Code section 17200. Plaintiffs contend that
3 Defendants violated the UCL when they failed to comply with the federal Truth in Lending
4 Act (“TILA”), 15 U.S.C. section 1601, and California Civil Code sections 2923.5 and
5 2923.6.

6 The day after Plaintiffs filed the FAC, on February 10, 2011, they filed an ex parte
7 application for a temporary restraining order and an order to show cause as to why a
8 preliminary injunction should not issue. Plaintiffs sought to delay a Trustee’s Sale of their
9 home scheduled for February 14, 2011. The Court granted a temporary restraining order and
10 scheduled a hearing on February 24, 2011. At that hearing, the Court asked Plaintiffs
11 questions aimed at discerning whether, in light Plaintiffs’ intention to proceed under the
12 FAC, the Court had jurisdiction over this case. Plaintiffs requested additional time to
13 determine the answers to the Court’s questions. The Court granted Plaintiffs’ request, and
14 just before a hearing on March 11, 2011, Plaintiffs filed the instant motion to remand.
15 Defendants oppose the motion.

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17 **LEGAL STANDARD**

18 A case brought in state court that gives rise to federal subject matter jurisdiction may
19 be removed by the defendant to federal court. 28 U.S.C. § 1441(a). The two bases for federal
20 subject matter jurisdiction are: (1) federal question jurisdiction, 28 U.S.C. § 1331; and (2)
21 diversity jurisdiction, 28 U.S.C. § 1332. A court has federal question jurisdiction over “civil
22 actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. §
23 1331. “The existence of federal question jurisdiction is ordinarily determined from the face
24 of the complaint.” *Sparta Surgical Corp. v. Nat’l Ass’n of Sec. Dealers, Inc.*, 159 F.3d 1209,
25 1211 (9th Cir. 1998). However,

26 [u]nder the artful pleading doctrine, a plaintiff may not defeat
27 removal by omitting to plead necessary federal questions in a
28 complaint The artful pleading doctrine allows courts to

1 delve beyond the face of the state court complaint and find
2 federal question jurisdiction by characterizing a plaintiff’s state-
3 law claim as a federal claim.
4 *Lippit v. Raymond James Fin. Servs., Inc.*, 340 F.3d 1033, 1041 (9th Cir. 2003) (citation and
5 quotation marks omitted).

6 Since its first articulation . . . courts have used the artful pleading
7 doctrine in (1) complete preemption cases, and (2) substantial
8 federal question cases. Subsumed within this second category are
9 those cases where the claim is necessarily federal in character, or
10 where the right to relief depends on the resolution of a
11 substantial, disputed federal question.

12 *Id.* at 1041-42 (internal citations and quotation marks omitted).

13 Generally speaking, the propriety of removal jurisdiction is determined “on the basis
14 of the pleadings filed at the time of removal without reference to subsequent amendments.”
15 *Sparta Surgical*, 159 F.3d at 1213. While a plaintiff cannot compel remand by subsequently
16 dismissing all claims giving rise to federal jurisdiction, see *id.*, when all federal claims are
17 removed from the case “it is generally within the court’s discretion either to retain
18 jurisdiction or adjudicate the pendent state claims or remand them to state court.” *Harrell v.*
19 *20th Century Ins. Co.*, 934 F.2d 203, 205 (9th Cir. 1991). While the court must consider “the
20 values of economy, convenience, fairness, and comity,” “it is generally preferable for a
21 district court to remand remaining pendent claims to state court.” *Id.* “When the balance of
22 these factors indicates that a case properly belongs in state court, as when the federal-law
23 claims have dropped out of the lawsuit in its early stages and only state-law claims remain,
24 the federal court should decline the exercise of jurisdiction . . .” *Carnegie-Mellon Univ. v.*
25 *Cohill*, 484 U.S. 343, 350, 108 S.Ct. 614, 98 L.Ed.2d 720 (1988).

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1 **DISCUSSION**

2 **I. Plaintiffs’ Motion to Remand**

3 The parties agree that at the time this case was removed, this Court had federal
4 question jurisdiction.¹ They disagree as to whether the FAC pleads federal claims, and if it
5 does not, whether the Court should exercise supplemental jurisdiction over Plaintiffs’ state
6 law claims.

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8 **A. Whether the FAC Contains Federal Claims**

9 Defendants argue that because Plaintiffs’ UCL claim is predicated upon federal law,
10 the Court does not have discretion to remand this case to state court. They cite *Moore v.*
11 *Chase Bank*, No. 08-0350 SC, 2008 WL 314664 (N.D. Cal. Feb. 4, 2008), another case in
12 which the plaintiff’s UCL claim alleged a violation of TILA. In *Moore*, the court held that
13 the plaintiff’s “repeated invocation of federal law in his Complaint . . . belies the fact that
14 resolution of questions of federal law underpin Plaintiff’s claims.” 2008 WL 314664, at *1.
15 There the plaintiff’s UCL and fraud claims rested at least in part on federal law, and the
16 complaint invoked several federal statutes and regulations. Here, whether Defendants
17 violated TILA is the only federal issue referenced in the FAC. Several mentions of TILA
18 violations, where TILA is one of three bases for a UCL claim, do not compel the Court to
19 determine that federal law underpins the claims in the FAC.

20 The Ninth Circuit has held that “the invocation of [federal law] as a basis for
21 establishing an element of a state law cause of action does not confer federal question
22 jurisdiction when the plaintiff also invokes a state constitutional provision or a state statute
23 that can and does serve the same purpose.” *Rains v. Criterion Syst.*, 80 F.3d 339, 345 (9th
24 Cir. 1996). In light of *Rains*, various district courts have come to the conclusion, in nearly

25
26 ¹ In their papers, Defendants CitiMortgage and CR Title Services appear to raise the
27 issue of whether the Court has diversity jurisdiction. They point out that Plaintiffs have
28 represented to the Court that they are residents of Texas and allege in the FAC that diversity
jurisdiction exists. Diversity is not determined by residency or by the FAC’s invocation of
diversity jurisdiction. *See Lew v. Moss*, 797 F.2d 747, 751 (9th Cir. 1986). Thus these facts,
without more, do not give rise to diversity jurisdiction.

1 identical circumstances, that “the complaint’s references to federal law do not convert the
2 UCL claim into a federal cause of action.” *Montoya v. Mortgageit Inc.*, No. C. 09-05589 SI,
3 2010 WL 546891, at *3 (N.D. Cal. Feb. 10, 2010); *see also Tran v. Metrocities Mortgage*
4 *LLC*, No. C10-00528 JF, 2010 WL 1924713 (N.D. Cal. May 12, 2010); *Briggs v. First Nat’l*
5 *Lending Servs.*, No. C10-00267 RS, 2010 WL 962955, at *3 (N.D. Cal. Mar. 16, 2010).

6 “When a claim can be supported by alternative and independent theories – one of
7 which is a state law theory and one of which is a federal law theory – federal question
8 jurisdiction does not attach because federal law is not a necessary element of the claim.”
9 *Rains*, 80 F.3d at 346. Thus because Plaintiffs’ UCL claim is supported by state-law theories
10 of liability, the claim is not necessarily federal in character, and the Caldwells’ right to relief
11 does not depend on the resolution of a disputed federal question. *See Lippit*, 340 F.3d at
12 1041-42. This conclusion is not overcome by the fact that the FAC makes passing reference
13 to federally mandated loan disclosures and other allegations that could support a TILA
14 violation. And the fact that the Caldwells used the word “predicated” to plead their UCL
15 claim is immaterial. Accordingly, the FAC does not allege federal claims.

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17 **B. Supplemental Jurisdiction**

18 Where federal claims giving rise to federal question jurisdiction have dropped out of
19 the litigation, the Court has discretion to remand the case to state court. *See Harrell*, 934 F.2d
20 at 205. Defendants argue that fairness requires the Court to retain jurisdiction in this case.
21 They cite *Carnegie-Mellon University*, which states that “[i]f the plaintiff has attempted to
22 manipulate the forum, the court should take this behavior into account in determining
23 whether the balance of factors to be considered under the pendent jurisdiction support a
24 remand in this case.” 484 U.S. at 357. Defendants point to irregularities in Plaintiffs’
25 prosecution of this case, and argue that “[i]t cannot be more clear that Plaintiffs dismissed
26 their federal claims after removal in order to get back to state court and to further delay the
27 pending foreclosure proceedings.” Defs.’ Opp’n, ECF No. 68, at 12-13. The Court disagrees.
28 While it is true that Plaintiffs’ conduct has been irregular, there is no indication that this

1 irregularity was the result of anything other than the confusion that would normally
2 accompany a substitution of counsel on the eve of a foreclosure sale.

3 The values of judicial economy and comity favor remand. This case is in its early
4 stages. It was removed in November 2010. Few federal resources have been expended
5 deciding the issues in this case, which are now almost exclusively questions of state law.
6 There is no reason for this Court to retain jurisdiction over state causes of action where state
7 courts are equally competent and more familiar with the governing law. As to convenience,
8 the Court has no reason to believe that this Court is any more convenient to the parties than
9 state court would be. Accordingly, Plaintiffs' motion to remand is GRANTED.

10 11 **II. The Parties Requests for Sanctions/Attorneys' Fees**

12 In their motion to remand, Plaintiffs ask the Court to award attorneys' fees and costs
13 incurred "in attacking an insufficient removal." Mot. at 8. While 28 U.S.C. section 1447(c)
14 states that "[a]n order remanding the case may require payment of just costs and any actual
15 expenses . . . ," Plaintiffs have articulated no basis for awarding attorneys fees. Removal to
16 federal court was proper because Plaintiffs' original Complaint gave rise to federal question
17 jurisdiction. The basis for remand did not arise until Plaintiffs filed the FAC. It would hardly
18 be appropriate to award fees and costs under these circumstances.

19 Defendants seek an order to show cause as to why sanctions should not be imposed
20 against Plaintiffs under Rule 11(b) of the Federal Rules of Civil Procedure. They argue that
21 various errors contained in Plaintiffs' motion to remand violate counsel's certification that
22 the motion's "factual contentions have evidentiary support." Fed. R. Civ. P. 11(b)(3). The
23 Court will not issue the order Defendants seek. Insofar as Defendants' request is a motion for
24 sanctions, it is procedurally defective. "A Rule 11 motion for sanctions must be served on
25 opposing counsel twenty-one days before filing the motion with the court, providing the
26 opposing counsel a 'safe harbor . . . to give the offending party the opportunity . . . to
27 withdraw the offending pleading and thereby escape sanctions.'" *Winterrowd v. Am. Gen.*
28 *Annuity Ins. Co.*, 556 F.3d 815, 826 (2009) (quoting *Barber v. Miller*, 146 F.3d 707, 710 (9th

1 Cir.1998), and citing Fed. R. Civ. P. 11(c)(2)). Defendants' failure to provide notice
2 precludes their request for Rule 11 sanctions.


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CONCLUSION

Plaintiffs' motion to remand this action to Alameda County Superior Court is
GRANTED. Plaintiffs' request for attorneys' fees and costs is DENIED. Defendants' request
for an order to show cause regarding Rule 11 sanctions is DENIED. Because the Court no
longer has jurisdiction over this case, Defendants' pending motions to dismiss and Plaintiffs'
request for temporary restraining order and preliminary injunction are VACATED.

IT IS SO ORDERED.

Dated: 4/4/11



THELTON E. HENDERSON, JUDGE
UNITED STATES DISTRICT COURT