

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOSE R. HERRERA and MARIE L. HERRERA,	)	Case No. C-11-1497 SC
	)	
Plaintiffs,	)	ORDER GRANTING PLAINTIFFS'
	)	<u>MOTION TO REMAND</u>
	)	
v.	)	
	)	
UNION FIDELITY MORTGAGE, INC.; CAL	)	
WIDE MORTGAGE; CAL WESTERN	)	
RECONVEYANCE CORPORATION;	)	
CITIBANK, N.A.; MORTGAGE	)	
ELECTRONIC REGISTRATION SYSTEMS,	)	
INC.; and EMC MORTGAGE	)	
CORPORATION;	)	
	)	
Defendants.	)	

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**I. INTRODUCTION**

Before the Court is a motion to remand this action to state court filed by Plaintiffs Jose R. Herrera and Marie L. Herrera ("Plaintiffs"). ECF No. 10 ("Mot."). Former Defendant Aurora Loan Services, LLC ("Aurora") filed an Opposition, which no other Defendants joined. ECF No. 13 ("Opp'n"). For the following reasons, the Court GRANTS Plaintiffs' Motion.

**II. BACKGROUND**

On February 17, 2011, Plaintiffs commenced this action in the Superior Court of California for the County of Alameda, bringing

1 nineteen state law claims relating to the origination and servicing  
2 of a mortgage on their Hayward, California home and the subsequent  
3 attempts to foreclose upon this home. ECF No. 1 ("Notice of  
4 Removal") Ex. A ("Compl."). Named in the Complaint as one of eight  
5 defendants was Aurora, although the body of Plaintiffs' Complaint  
6 included no specific references to Aurora. Id.

7 On March 28, 2011, Aurora removed the action to federal court,  
8 citing 28 U.S.C. § 1331 as the basis for removal. See Notice of  
9 Removal. Specifically, Aurora alleged that Plaintiffs' claims of  
10 negligence and violation of section 17200 of California's Business  
11 and Professions Code ("section 17200 claim") are partially premised  
12 on violations of federal law. Id. In Plaintiffs' pleading of  
13 their negligence claim, they allege violation of the Truth-in-  
14 Lending Act ("TILA") and 12 C.F.R. § 226.34 ("Regulation Z"); in  
15 Plaintiffs' pleading of their section 17200 claim, they allege  
16 violations of TILA, the Real Estate Settlement Procedures Act  
17 ("RESPA"), and sections 1916.7 and 1921 of the California Civil  
18 Code. Compl. ¶¶ 164, 167.

19 On April 4, 2011, Aurora moved to dismiss the action, alleging  
20 that Aurora did not service Plaintiffs' loan and noting that  
21 Plaintiffs failed to make any specific allegations against Aurora,  
22 let alone mention the name "Aurora," in the body of their  
23 Complaint. ECF No. 4. On May 3, 2011, Plaintiffs filed the  
24 instant Motion to remand this action to state court; in it,  
25 Plaintiffs seek an award of attorneys' fees and costs under 28  
26 U.S.C. § 1447(c). See Mot. On May 13, 2011, Aurora filed its  
27 Opposition, which no other Defendant joined. See Opp'n. On May  
28 26, 2011, Plaintiffs voluntarily dismissed Aurora from this action;

1 the Clerk of the Court subsequently terminated Aurora as a party.  
2 ECF No. 14. On June 9, 2011, Defendants Citibank, N.A., et al.  
3 filed a motion to dismiss Plaintiffs' action, which is now fully  
4 briefed. ECF Nos. 19, 23, 24.

5 In their Motion, Plaintiffs argue that remand is proper  
6 because the Court lacks subject matter jurisdiction over this  
7 action. Mot at 1. They contend that neither their negligence nor  
8 their section 17200 claim is an artfully pleaded federal claim and  
9 that neither claim necessarily requires a determination of a  
10 federal question. Id.

11  
12 **III. LEGAL STANDARD**

13 "[A]ny civil action brought in a State court of which the  
14 district courts of the United States have original jurisdiction,  
15 may be removed by the defendant or the defendants, to the district  
16 court of the United States for the district and division embracing  
17 the place where such action is pending." 28 U.S.C. § 1441(a).  
18 District courts have original jurisdiction over "federal question"  
19 cases -- those cases "arising under the Constitution, laws, or  
20 treaties of the United States." 28 U.S.C. § 1331. District courts  
21 must remand actions where subject matter jurisdiction is lacking.  
22 28 U.S.C. § 1447(c). As a general rule, the court must strictly  
23 construe the removal statute, "and any doubt about the right of  
24 removal requires resolution in favor of remand." Moore-Thomas v.  
25 Alaska Airlines, Inc., 553 F.3d 1241, 1244 (9th Cir. 2009)  
26 (citation omitted). "The presumption against removal means that  
27 the defendant always has the burden of establishing that removal is  
28 proper." Id. (internal quotations omitted).

1 **IV. DISCUSSION**

2 The Court GRANTS Plaintiffs' Motion. Because Aurora is no  
3 longer a party to this action and no other Defendants filed an  
4 opposition or joined in Aurora's Motion, Plaintiffs' Motion is  
5 effectively unopposed. However, even if another Defendant had  
6 joined in Aurora's Opposition, the Court would rule in Plaintiffs'  
7 favor.

8 Plaintiffs bring no federal claims in their Complaint. Aurora  
9 argued in its Opposition that Plaintiffs' section 17200 claim is  
10 "primarily based on the allegation that the Yield Spread Premium  
11 (YSP) Plaintiffs paid on their loan violated the reasonableness of  
12 fees standard under RESPA." Id. at 3. Similarly, Aurora argued  
13 that Plaintiffs' negligence claim is premised partially on  
14 Defendants' violation of TILA and Regulation Z. Id. at 4.

15 Federal courts have subject matter jurisdiction over a state  
16 law claim under 28 U.S.C. § 1331 if it "necessarily raise[s] a  
17 stated federal issue, actually disputed and substantial, which a  
18 federal forum may entertain without disturbing any congressionally-  
19 approved balance of federal and state judicial responsibilities."  
20 Grable & Sons Metal Prod., Inc. v. Darue Eng'g & Mfg., 545 U.S.  
21 308, 314 (2005). Plaintiffs correctly note that while their  
22 section 17200 and negligence claims are partially premised on  
23 violations of federal law, the Complaint pleads "alternative and  
24 independent theories" supporting them. Mot. at 9. Put simply,  
25 Plaintiffs could prevail on both claims without addressing a  
26 question of federal law. As such, Defendants have failed to  
27 establish that any federal question imbedded in Plaintiffs' claims  
28 is both necessary and substantial under Grable.

1 Plaintiffs seek attorneys' fees under 28 U.S.C. § 1447(c),  
2 which provides: "An order remanding the case may require payment of  
3 just costs and any actual expenses, including attorney fees,  
4 incurred as a result of the removal." The Supreme Court has held  
5 that "[a]bsent unusual circumstances, courts may award attorney's  
6 fees under § 1447(c) only where the removing party lacked an  
7 objectively reasonable basis for seeking removal." Martin v.  
8 Franklin Capital Corp., 546 U.S. 132, 141 (2005) (citations  
9 omitted). "Conversely, when an objectively reasonable basis  
10 exists, fees should be denied." Id. The Court finds that Aurora's  
11 stated basis for removal was not objectively unreasonable;  
12 accordingly, it DENIES Plaintiffs' request for attorneys' fees.

13 Because the Court lacks subject matter jurisdiction over this  
14 action, it does not rule on the motion to dismiss filed by  
15 Defendants Citibank N.A., et al.

16  
17 **V. CONCLUSION**

18 For the foregoing reasons, the Court GRANTS the Motion to  
19 remand this action filed by Plaintiffs Jose R. Herrera and Marie L.  
20 Herrera, and REMANDS this action to Superior Court of California  
21 for the County of Alameda. Plaintiffs' request for attorneys' fees  
22 is DENIED.

23  
24 IT IS SO ORDERED.

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26 Dated: August 31, 2011

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UNITED STATES DISTRICT JUDGE

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