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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
8 SAN FRANCISCO DIVISION
9

10 JEFFREY LEW,

No. C 11-04546 RS

11 Plaintiff,

**ORDER DENYING MOTION TO
REMAND**

12 v.

13 U.S. BANK NATIONAL ASSOCIATION,
14 FCI LENDER SERVICES, AND DOES 1
through 100, inclusive,15 Defendants.
16 _____/

17 I. INTRODUCTION

18 Plaintiff filed this action in the Contra Costa County Superior Court alleging violations of
19 the federal Truth in Lending Act (TILA), 15 U.S.C. § 1601, and various state laws. Defendants
20 removed the case to this court. Plaintiff, appearing *pro se* at least for purposes of removal, filed a
21 document styled as an “Objection to Removal,” to which defendants replied with an opposition
22 brief. Pursuant to Civil Local Rule 7-1(b), the motion is suitable for disposition without oral
23 argument, and for the reasons stated below, is denied.

24 II. BACKGROUND

25 Plaintiff Jeffery Lew filed this action on September 9, 2011, in the Contra Costa County
26 Superior Court against U.S. Bank National Association and FCI Lender Services, advancing claims
27 for relief for: (1-2) declaratory and injunctive relief; (3) violations of the Truth in Lending Act under
28 California Financial Code § 4970 and 15 U.S.C. § 1601; (4) fraudulent omissions; (5) violations of

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1 California Business & Professions Code § 17200; and (6) an accounting. On September 13, 2011,
2 defendants filed a notice of removal on the eve of a hearing on Lew’s motion to restrain defendants
3 temporarily from proceeding with an anticipated foreclosure sale. The notice of removal deprived
4 the Superior Court of jurisdiction and precluded plaintiff from obtaining temporary injunctive relief.
5 The next day, Lew’s home was sold at auction. On October 13, 2011, plaintiff filed a document
6 entitled “Objection to Removal,” but failed to notice it properly, as required by Local Rule 7-2
7 (Notice and Supporting Papers). On October 26, defendants filed an opposition brief.

8 III. LEGAL STANDARD

9 A defendant may remove to federal court “any civil action brought in a State court of which
10 the district courts of the United States have original jurisdiction.” 28 U.S.C. § 1441(a). *See also id.*
11 at § 1446(b) (defendant must file a notice of removal within 30 days after receiving the original
12 pleading), and *Provincial Gov’t of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1087 (9th Cir.
13 2009) (courts strictly construe the removal statute against finding jurisdiction and the defendant
14 bears the burden of establishing the basis for removal). Removal is appropriate if a case originally
15 filed in state court presents a federal question “arising under” the Constitution, treaties, or laws of
16 the United States. *Id.* at § 1331. *Caterpillar, Inc v. Williams*, 482 U.S. 386, 392 (1987). Under the
17 well-pleaded complaint rule, the existence of a federal question is ordinarily determined by
18 reference to the face of the plaintiff’s complaint. *Sparta Surgical Corp. v. Assoc. of Sec. Dealers*,
19 159 F.3d 1209, 1211 (9th Cir. 1998). However, the exercise of federal question jurisdiction is also
20 appropriate if “it appears that some substantial, disputed question of federal law is a necessary
21 element of one of the well-pleaded state claims.” *Franchise Tax Bd. of State of Cal. v. Construction*
22 *Laborers Vacation Trust for So. Cal.*, 436 U.S. 1, 13 (1983). *But see Rains v. Criterion Sys., Inc.*,
23 80 F.3d 339, 346 (9th Cir. 1996) (“when a claim can be supported by alternative and independent
24 [state and federal] theories federal question jurisdiction does not attach because federal law is not a
25 necessary element of the claim”).

26 When a plaintiff asserts both state and federal claims, “the entire case may be removed and
27 the district court may determine all issue therein, or, in its discretion, may remand all matters in
28 which State law predominates.” *Id.* at § 1441(c). Under § 1367(a), the Ninth Circuit has

1 emphasized, “the district courts *shall* have supplemental jurisdiction over all other claims that are so
2 related to claims in the action within such original jurisdiction that they form part of the same case
3 or controversy under Article III of the United States Constitution.” *Executive Software North*
4 *America, Inc. v. U.S. Dist. Court for Central District of California*, 24 F.3d 1545, 1557 (9th Cir.
5 1994) (emphasis in original), *citing* § 1367(a). Thus, the district courts may *only* decline to exercise
6 supplemental jurisdiction over state law claims that arise from the same case or controversy if: “(1)
7 the claim raises a novel or complex issue of State law, (2) the claim substantially predominates over
8 the claim or claims over which the district court has original jurisdiction, (3) the district court has
9 dismissed all claims over which it has original jurisdiction, or (4) in exceptional circumstances,
10 there are other compelling reasons for declining jurisdiction.” *Id.* at § 1367(c). These provisions,
11 sometimes referred to as the *Gibbs* factors, are interpreted and applied so as to promote judicial
12 “economy, convenience, fairness, and comity.” *Executive Software*, 24 F.3d at 1557, *quoting*
13 *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 726 (1966).

14 IV. DISCUSSION

15 As a threshold matter, plaintiff’s “Objection to Removal,” filed *pro se*, is properly construed
16 as a motion to remand under 28 U.S.C. § 1447(c). *See Abassi v. I.N.S.*, 305 F.3d 1028, 1032 (9th
17 Cir. 2002) (“we have consistently held that procedural requirements should be more liberally
18 construed for *pro se* litigants”). Such a construction is particularly appropriate in present
19 circumstances given the Court’s own ongoing duty to ensure that the values of judicial economy,
20 convenience, fairness, and comity are served by the exercise of supplemental jurisdiction over
21 related state law claims. *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988).

22 Turning to the merits of Lew’s objections to removal, his third claim for relief, by its own
23 express terms, accuses defendants of violating TILA, 15 U.S.C. § 1601, and related administrative
24 regulations. Such a claim, squarely based on federal law, suffices to create a federal question for
25 removal purposes under § 1441(a). Although the heading of plaintiff’s third claim for relief cites
26 both TILA and California Financial Code § 4970, the content of his complaint forecloses the
27 possibility that he has alleged “alternative and independent” state and federal bases for relief. *Rains*,
28 80 F.3d at 346. First, apart from that single title reference to state law, the paragraphs that follow

1 address federal law and administrative regulations exclusively. Second, this is not the exceptional
2 case where, despite the complaint’s repeated references to, and extended discussion of, federal law,
3 Lew’s claims for relief actually sound in state law. *Id.* at 343 (no federal question jurisdiction where
4 state law claim for violation of public policy was predicated on state and federal law, alternatively).
5 Further, plaintiff is simply mistaken in asserting that removal is proper only if his complaint asserts
6 claims exclusively arising under federal law. The rule is, rather, that if even a single claim for relief
7 sounds in federal law, §§ 1441(c) and 1367(a) potentially confer supplemental jurisdiction over the
8 entire case. It follows that the Court possesses original jurisdiction over at least plaintiff’s third
9 claim for relief.

10 Lew’s other claims are closely related to his third claim for relief. His factual allegations,
11 according to the complaint, apply “to all causes of actions,” and are incorporated by reference into
12 each claim. More fundamentally, there is no doubt that each of Lew’s claims concerns the
13 defendants’ alleged failure to disclose adequately the terms of his loan. In other words, plaintiff’s
14 “state and federal claims derive from a common nucleus of operative fact and are the types of claims
15 the Court would ordinarily be expected to try together in one proceeding.” *Executive Software*, 24
16 F.3d at 1563. Accordingly, the exercise of supplemental jurisdiction over plaintiff’s state law
17 claims is mandated by the Ninth Circuit’s interpretation of § 1367(a), as set forth in *Executive*
18 *Software*. *Id.* at 1557.

19 The *Gibbs* factors do not justify remand. *See* § 1367(c)(1)-(4). First, plaintiff’s claims do
20 not present novel or complex issues of state law. Rather, the questions presented by this case are,
21 sadly, all too familiar to state and federal courts awash in foreclosure-related litigation. Second,
22 without prejudging the merits of the case, it is apparent that Lew’s TILA claim is likely to be the
23 most substantial of all, in terms of the complexity and scope of the issues presented. Therefore it
24 cannot be said that his state law claims “substantially predominate.” The third *Gibbs* factor is
25 inapplicable. As for the fourth factor, the Ninth Circuit has severely limited the scope of the district
26 court’s discretion under § 1367(c)(4). *Executive Software*, 24 F.3d at 1557-60. In particular, a court
27 may decline to exercise supplemental jurisdiction over related state law claims only if there is: (1) a
28 predicate finding of “exceptional circumstances,” and (2) a rationale for declination (e.g., “other

1 compelling reasons”) that is directed to promoting “economy, convenience, fairness, and comity.”
2 *Id.* at 1557-60. As noted above, there is little exceptional about the circumstances of this case.
3 Moreover, because plaintiff’s various claims all arise from the same set of facts, it is clear that
4 judicial economy and the convenience of the parties are best served by exercising supplemental
5 jurisdiction over the entire case. Finally, although the defendants in this case have, in a sense,
6 pulled the rug out from the plaintiff by divesting the state court of jurisdiction at the last moment, a
7 review of the relevant authority indicates that such strategic maneuvering is not the kind of
8 unfairness to which § 1367(c)(4) is directed. *See, e.g., Arista Records LLC v. Lime Group LLC*, 532
9 F. Supp. 2d 556, 585 (S.D.N.Y. 2007) (declining to exercise supplemental jurisdiction to discourage
10 strategic filing of attenuated counterclaims). Accordingly, plaintiff’s motion to remand must be
11 denied as to all claims.

12 V. CONCLUSION

13 For all of the reasons discussed above, plaintiff’s motion to remand is denied.

14 IT IS SO ORDERED.

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16 Dated: 11/7/11



17 RICHARD SEEBORG
18 UNITED STATES DISTRICT JUDGE