

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MERLY VALDEZ,	)	Case No.: 10-CV-2292-LHK
)	
Plaintiff,	)	ORDER GRANTING PLAINTIFF’S
v.	)	MOTION TO REMAND AND
	)	DENYING PLAINTIFF’S REQUEST
	)	FOR ATTORNEY’S FEES AND COSTS;
AMERICAN FUNDING; GREENPOINT	)	DENYING DEFENDANTS’ MOTION
MORTGAGE FUNDING, INC.; ETS	)	TO DISMISS AS MOOT; DENYING
SERVICES, LLC; MORTGATE	)	PLAINTIFF COUNSEL’S MOTION TO
ELECTRONICS REGISTRATION SYSTEMS,	)	WITHDRAW AS MOOT; REMANDING
INC.; and DOES 1-50, inclusive,	)	CASE TO SUPERIOR COURT FOR
	)	COUNTY OF SANTA CLARA
Defendants.)	
	)	(re: dockets #4, #9, #24)

Currently pending before the Court are Defendants’ Motion to Dismiss [dkt. #4], Plaintiff’s Motion to Remand [dkt. #9, and Plaintiff Counsel’s Motion to Withdraw as Counsel [dkt. #24]. Pursuant to Civil Local Rule 7-1(b), the Court finds the matter appropriate for resolution without oral argument. The Court GRANTS Plaintiff’s Motion to Remand and DENIES Plaintiff’s request for attorney fees and costs. The Court DENIES Defendants’ Motion to Dismiss as moot and DENIES Plaintiff Counsel’s Motion to Withdraw as Counsel as moot.

I. BACKGROUND

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2 Plaintiff Merly Valdez filed a complaint in the Superior Court of the State California for
3 the County of Santa Clara on February 25, 2010 in relation to Defendants’ business practices
4 surrounding the refinancing, default, and eventual foreclosure proceedings on her home. Plaintiff’s
5 complaint alleges seventeen causes of action -- all seventeen are pursuant to California state law.
6 Two of those seventeen causes of action, specifically the seventh cause of action for fraud and
7 eighth cause of action for negligence, allege that in addition to violating state laws, Defendants’
8 actions also violate the Truth in Lending Act (“TILA”) and a federal regulation (“Regulation Z”).
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10 Compl. ¶¶ 146-147, 151-152.

11 On May 26, 2010, Defendants removed the case to this Court asserting federal question
12 jurisdiction on the ground that Plaintiff’s eighth cause of action for negligence “necessarily
13 requires resolution of substantial questions of federal law.” Notice of Removal ¶¶ 6-11. Plaintiff
14 has moved to remand, and requested attorney fees and costs. Defendants have moved to dismiss,
15 asserting that all seventeen causes of action fail to state a claim upon which relief can be granted.
16 Both the Motion to Remand and the Motion to Dismiss are fully briefed.

II. LEGAL STANDARDS

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19 The Court must have subject matter jurisdiction in order to rule upon Defendants’ motion to
20 dismiss. The bases for federal subject matter jurisdiction are: 1) federal question jurisdiction under
21 28 U.S.C. § 1331; and 2) diversity jurisdiction under 28 U.S.C. § 1332. Defendants’ Notice of
22 Removal alleges only federal question jurisdiction, not diversity jurisdiction. A suit may be
23 removed from state court to federal court if the federal court would have had subject matter
24 jurisdiction over the case. 28 U.S.C. § 1441(a). The Court must "strictly construe the removal
25 statute against removal jurisdiction" and "[f]ederal jurisdiction must be rejected if there is any
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1 doubt as to the right of removal in the first instance." *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th
2 Cir. 1992) (internal citations omitted).

3 III. DISCUSSION

4 A. Defendants' Removal and Plaintiff's Motion to Remand

5 Defendants removed this case asserting that Plaintiff's cause of action for negligence
6 necessarily requires resolution of substantial questions of federal law. Defendants cite U.S.
7 Supreme Court authority for the proposition that a complaint composed entirely of state law claims
8 raises a removable federal question when: 1) the state law claim "raises a federal issue;" 2) the
9 federal issue is "disputed and substantial;" and 3) removal would not "disrupt the balance of
10 federal and state judicial responsibilities." *See Grable & Sons Metal Prods., Inc. v. Darue Eng'g*
11 *& Mfg.*, 545 U.S. 308, 314.

12 The Court agrees with Defendants that federal law is implicated by Plaintiff's negligence
13 cause of action. Specifically, Plaintiff's refer to TILA as the source of the duty breached by
14 Defendants' actions. But the incorporation of allegations regarding TILA is not, by itself,
15 sufficient to confer federal jurisdiction. *See, e.g., Meza v. Matrix Servicing*, 2010 U.S. Dist.
16 LEXIS 5769 (E.D. Cal. Jan. 25, 2010) (finding that negligence cause of action in complaint, even
17 when referencing federal law on duty element, did not arise under federal jurisdiction because duty
18 of care could be established independently); *see also Montoya Mortgageit, Inc.*, 2010 U.S. Dist.
19 LEXIS 20783 (N.D. Cal. Feb. 10, 2010) (ordering remand because references to federal law,
20 including TILA, did not confer federal jurisdiction).

21 Under *Grable*, there must be a *substantial* federal question. That substantial federal
22 question is lacking here because resolution of the federal issue (whether or not TILA creates a duty
23 for Plaintiff's negligence cause of action) will not be dispositive of the case in whole and will not
24 be controlling in numerous other cases. *See Empire HealthChoice Assurance, Inc. v. McVeigh*, 547

1 U.S. 677, 700 (2006). In fact, resolution of this federal issue would only provide a drop in the
2 bucket of what is overwhelmingly a state law-based and fact-intensive inquiry into the interactions
3 surrounding this particular loan and this particular Plaintiff. Defendants themselves acknowledge
4 that Plaintiff has not alleged any federal claims. *See, e.g.*, Defs.’ Reply to Opp’n to Mot. to
5 Dismiss 5 (“Notwithstanding the fact that Plaintiff has not alleged any claims under these [federal]
6 statutes and regulations ...”). As the “master of her complaint,” Plaintiff chose to plead only state
7 law causes of action and is entitled to a state court forum. Moreover, the Court notes that remand
8 does not disrupt the balance of federal and state judicial responsibilities. *See Grable*, 545 U.S. at
9 314. Congress has expressly conferred on state courts authority to entertain TILA claims. *See* 15
10 U.S.C. § 1640(e) (“Any action arising under this section may be brought in any United States
11 district court, or in any other court of competent jurisdiction”); *see also In re Countrywide Fin.*
12 *Corp. Mortg. Marketing & Sales Practices Litig.*, 2008 U.S. Dist. LEXIS 105440, *21 (S.D. Cal.
13 Dec. 30, 2008) (noting that remand would not disturb congressionally approved balance of federal
14 and state judicial responsibilities because “federal and state courts have concurrent jurisdiction to
15 adjudicate TILA [and other federal] disputes.”).

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18 *B. Plaintiff’s Request for Attorney Fees and Costs*

19 District courts have wide discretion on whether to award attorney fees in an order to
20 remand. *See* 28 U.S.C. § 1447(c). Under the circumstances of this case, the Court does not find it
21 appropriate to award attorney’s fees and costs. Accordingly, Plaintiff’s request for fees and costs is
22 DENIED.

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24 **IV. CONCLUSION**

25 For the foregoing reasons, the Court GRANTS Plaintiff’s motion to remand for lack of
26 subject matter jurisdiction and DENIES Plaintiff’s motion for attorney fees and costs. The Court
27 DENIES Defendants’ motion to dismiss as moot. The Court DENIES Plaintiff Counsel’s recently
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filed motion to withdraw as counsel as moot. The September 2, 2010 hearing is vacated. The Clerk shall close the file and terminate any pending motions.

IT IS SO ORDERED.

Dated: August 31, 2010



LUCY H. KOH
United States District Judge