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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

CHARLES R. SMITH, et al.,

Plaintiffs,

vs.

BAYVIEW LOAN SERVICING,  
LLC,

Defendant.

CASE NO. 14-cv-836-MMA (KSC)

**ORDER SUA SPONTE  
REMANDING ACTION TO STATE  
COURT**

[Doc. No. 1]

On February 13, 2014, Plaintiffs Charles and Patricia Smith (collectively, “Plaintiffs”) filed a complaint in Small Claims Court of the Superior Court of California, County of San Diego, seeking to recover their refunded taxes in the amount of \$2,647.96 from Defendant Bayview Loan Servicing, LLC (“Defendant”). *See* Doc. No. 1-2. On April 8, 2014, Defendant, proceeding through counsel, filed a notice of removal based on federal question jurisdiction. Having reviewed Defendant’s notice of removal, the Court finds it does not have subject matter jurisdiction over this action. The Court therefore **REMANDS** this action to the, San Diego County Superior Court, Case No. 37-2014-00300314-SC-SC-NC.

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1 DISCUSSION

2 The federal court is one of limited jurisdiction and possesses only that power  
3 authorized by the Constitution or a statute. *See Lowdermilk v. U.S. Bank Nat'l*  
4 *Ass'n*, 479 F.3d 994, 997 (9th Cir. 2007); *Bender v. Williamsport Area Sch. Dist.*,  
5 475 U.S. 534, 541, 106 S. Ct. 1326 (1986). The federal court is constitutionally  
6 required to raise issues related to federal subject matter jurisdiction and may do so  
7 *sua sponte*. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 93-94 (1998); *see*  
8 *Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990).

9 Removal jurisdiction is governed by 28 U.S.C. § 1441 *et seq.* A defendant  
10 can only remove a state court action if the plaintiff could have originally filed the  
11 action in federal court. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987);  
12 *Duncan v. Stuetzle*, 76 F.3d 1480, 1485 (9th Cir. 1996). Thus, for a defendant to  
13 remove an action on the basis of federal question jurisdiction, the complaint must  
14 establish either that federal law creates the cause of action or that the plaintiff's right  
15 to relief necessarily depends on the resolution of substantial questions of federal law.  
16 *Franchise Tax Board of Cal. v. Construction Laborers Vacation Trust for Southern*  
17 *Cal.*, 463 U.S. 1, 10-11 (1983). Additionally, a federal court also has jurisdiction  
18 over an action involving citizens of different states when the amount in controversy  
19 exceeds \$75,000. 28 U.S.C. § 1332.

20 "The burden of establishing federal jurisdiction is on the party seeking  
21 removal, and the removal statute is strictly construed against removal jurisdiction."  
22 *Nishimoto v. Federman-Bachrach & Assoc.*, 903 F.2d 709, 712 n.3 (9th Cir. 1990).  
23 "Federal jurisdiction must be rejected if there is any doubt as to the right of removal  
24 in the first instance." *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The  
25 well-pleaded complaint rule governs whether federal jurisdiction exists. *Caterpillar*,  
26 482 U.S. at 392. The well-pleaded complaint rule is a "powerful doctrine [that]  
27 severely limits the number of cases in which state law 'creates the cause of action'  
28 that may be initiated in or removed to federal district court . . . ." *Franchise Tax Bd.*,

1 463 U.S. at 9-10. Under this rule, the federal question must be “presented on the  
2 face of the plaintiff’s properly pleaded complaint.” *Id.*; accord *Wayne v. DHL*  
3 *Worldwide Express*, 294 F.3d 1179, 1183 (9th Cir. 2002).

4 Here, Defendant indicates on the civil cover sheet that jurisdiction in this  
5 Court is based on a federal question, specifically a claim under the Real Estate  
6 Settlement Procedures Act (“RESPA”), 12 U.S.C. § 2601, *et seq.* Doc. No. 1-1.  
7 However, in looking to Plaintiff’s complaint, the Court finds that a federal question  
8 is not presented on the face of Plaintiff’s small claims court complaint. *See* Doc.  
9 No. 1-2. Instead, the allegations in the complaint state in their entirety “Bayview  
10 erroneously paid our taxes to the San Diego tax collector. The SD tax collector  
11 confirms that it returned our \$2,647.96 to Bayview in January 2013 by bulk wire  
12 transfer. Bayview has not refunded us despite calls and faxes.” *See* Doc. No. 1-2 at  
13 4. Thus, contrary to Defendant’s assertions in the notice of removal, the complaint  
14 does not assert a claim related to costs and disclosures under RESPA.

15 Moreover, to the extent Defendant has removed based on anticipated defenses  
16 under RESPA or other federal statutes, removal is also improper. Defendant’s  
17 anticipated defenses or counterclaims cannot establish federal jurisdiction. *See*  
18 *Takeda v. Nw. Nat’l Life Ins. Co.*, 765 F.2d 815, 822 (9th Cir. 1985) (holding a  
19 defendant’s counterclaim presenting a federal question does not make a case  
20 removable). As such, this Court does not have subject matter jurisdiction on the  
21 basis of federal question.

22 This leaves diversity of citizenship as the only available basis of jurisdiction  
23 in this Court. As noted above, a federal court has jurisdiction over an action  
24 involving citizens of different states when the amount in controversy exceeds  
25 \$75,000. 28 U.S.C. § 1332. The removing party has the burden of establishing  
26 removal jurisdiction. *Lowdermilk*, 479 F.3d at 997; *see Abrego Abrego v. The Dow*  
27 *Chem. Co.*, 443 F.3d 676, 682-83 (9th Cir. 2006) (the removing defendant has  
28 “‘always’ borne the burden of establishing federal jurisdiction, including any

1 applicable amount in controversy requirement”) (quoting *Gaus*, 980 F.2d at 566)  
2 (“Normally, this burden is satisfied if the plaintiff claims a sum greater than the  
3 jurisdictional requirement.”). Courts determine the amount in controversy at the  
4 time of removal and based on the allegations in the operative pleading. *Lowdermilk*,  
5 479 F.3d at 994.

6 Although diversity of citizenship may exist between the parties—Plaintiffs are  
7 citizens of California and Defendant is a citizen of Illinois and/or Florida—the  
8 amount of controversy is \$2,647.96 and therefore does not exceed the requisite  
9 \$75,000. Thus, the Court does not have diversity jurisdiction in this matter.

10 Defendant has not shown that the state court action could have originally been  
11 brought in federal court; therefore, the Court must remand this action.

12 **CONCLUSION**

13 Having carefully reviewed the notice of removal and the accompanying  
14 documents, the Court finds and concludes that it does not have subject matter  
15 jurisdiction over this action. Accordingly, the Court **REMANDS** the above  
16 captioned Case No. 37-2014-00300314-SC-SC-NC to the Small Claims Court of the  
17 Superior Court of California, County of San Diego. The Clerk of Court shall return  
18 the case to the state court forthwith and close this action.

19 **IT IS SO ORDERED.**

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21 DATED: April 10, 2014

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23 Hon. Michael M. Anello  
24 United States District Judge

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