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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 JOHN G. PETROU, an individual,  
12 Plaintiff,

Case No.: 17-cv-0030-BTM-JLB

13 v.

**ORDER REMANDING CASE**

14 NAVIENT CORPORATION, a  
15 Delaware corporation; SALLIE  
16 MAE CORPORATION, a Delaware  
17 corporation; SELAINA A.  
PETROU, an individual,  
18 Defendants.

19 On January 6, 2017, Navient Solutions ("Defendant"), a defendant in a  
20 state court action originally filed in the Superior Court of California, County of San  
21 Diego, filed a Notice of Removal removing the action to this Court. (Notice of  
22 Removal, ECF No. 1.) The Court finds that Defendant's Notice of Removal fails  
23 to establish that this Court has subject matter jurisdiction over the removed  
24 action, and accordingly **REMANDS** the action to state court.

25 Defendant asserts that removal is proper on the basis of federal question  
26 jurisdiction. (Notice of Removal at 2.) It argues that Plaintiff's complaint rests on  
27 federal law, namely the Higher Education Act ("HEA"), 20 U.S.C. §§ 1070. (Id. at  
28 3.)

1 Subject to exceptions not applicable here, “[A]ny civil action brought in a  
2 State court of which the district courts of the United States have original  
3 jurisdiction, may be removed by the defendant or the defendants, to the district  
4 court of the United States for the district and division embracing the place where  
5 such action is pending.” 28 U.S.C. § 1441(a). The removal statute is strictly  
6 construed against removal jurisdiction, and the removing defendant bears the  
7 burden of establishing federal jurisdiction. *California ex rel. Lockyer v. Dynegy,*  
8 *Inc.*, 375 F.3d 831, 838 (9th Cir. 2004).

9 “Congress has given the lower federal courts jurisdiction to hear, originally  
10 or by removal from a state court, only those cases in which a well-pleaded  
11 complaint establishes either that federal law creates the cause of action or that  
12 the plaintiff’s right to relief necessarily depends on resolution of a substantial  
13 question of federal law.” *Franchise Tax Bd. Of State of Calif. V. Constr. Laborers*  
14 *Vacation Tr. for S. Calif.*, 463 U.S. 1, 27–28 (1983). Whether a case “arises  
15 under” federal law thus turns on the nature of the claims asserted in plaintiff’s  
16 complaint. See *id.* at 10 (“For better or worse . . . a defendant may not remove a  
17 case to federal court unless the plaintiff’s complaint establishes that the case  
18 ‘arises under’ federal law”). “A federal defense, however, is ‘inadequate to confer  
19 federal jurisdiction.’” *Dennis v. Hart*, 724 F.3d 1249, 1253 (9th Cir. 2013)  
20 (quoting *Merrell Dow Pharm. Inc. v. Thompson*, 478 U.S. 804, 808 (1986)).

21 Here, Defendant argues that federally owned and guaranteed student loans  
22 are exclusively governed by the HEA and because “Plaintiff’s claims relate to his  
23 Federal Direct PLUS loan, they necessarily arise under federal law and are subject  
24 to this Court’s original jurisdiction.” (Notice of Removal at 3.) However, Plaintiff  
25 filed a complaint asserting only state law causes of action: (1) fraud; (2)  
26 cancellation/rescission of the parent plus loan; (3) violation of the California Identity  
27 Theft Act; (4) violation of the California Consumer Credit Reporting Agencies Act;  
28 and (5) declaratory relief. (Notice of Removal, Ex. A.) The complaint therefore

1 does not state a federal claim, nor do the asserted causes of action rest on federal  
2 law. While Plaintiff's state law claims may relate to federal law, Plaintiff's right to  
3 relief does not necessarily depend on a substantial question of federal law. See  
4 *Merrell Dow Pharmaceuticals*, 478 U.S. at 807–808. Moreover, the Ninth Circuit  
5 has held that the HEA affords no private right of action. *Parks Sch. of Business v.*  
6 *Symington*, 51 F.3d 1480, 1485 (9th Cir. 1995).

7 Defendant further argues that the HEA and regulations issued by the  
8 Department of Education completely preempt conflicting state law theories of  
9 liability. (Notice of Removal at 3.) To the extent that Defendant is arguing that the  
10 doctrine of complete preemption applies to the HEA, the Court is not persuaded.  
11 To support a finding of complete preemption, the preemptive force of federal law  
12 must be so “‘extraordinary’ that it converts state common law claims into claims  
13 arising under federal law for purposes of jurisdiction.” *Holman v. Laulo-Rowe*  
14 *Agency*, 994 F.2d 666, 668 (9th Cir. 1993) (citing *Caterpillar, Inc. v. Williams*, 482  
15 U.S. 386, 393 (1987)). The doctrine of complete preemption, however, is  
16 extremely limited. *Id.* The United States Supreme Court has only recognized three  
17 areas of complete preemption: (1) claims under the Labor Management Relations  
18 Act (“LMRA”); (2) claims under the Employment Retirement and Insurance  
19 Security Act (“ERISA”); and (3) certain Indian Land grant rights. See *Ben. Nat’l*  
20 *Bank v. Anderson*, 539 U.S. 1, 8 (2003). The Ninth Circuit, along with its sister  
21 circuits, have rejected the proposition that the HEA completely preempts state law  
22 claims. *Keams v. Tempe Technical Inst., Inc.*, 39 F.3d 222 (9th Cir. 1994) (“The  
23 Higher Education Act has not be read . . . as occupying the field and leaving no  
24 room for state law to operate.”); see also *Armstrong v. Accrediting Council for*  
25 *Educ.*, 168 F.3d 1362, 1639 (D.C. Cir. 1999); see also *Ammedie v. Sallie Mae,*  
26 *Inc.*, No. 12-10012, 2012 WL 3100771, at \*3 (11th Cir. July 31, 2012).

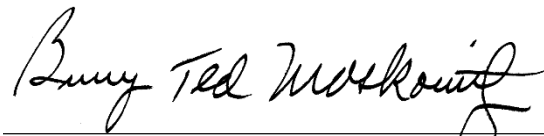
27 In the absence of complete preemption, Defendant's allegations are, at most,  
28 a defense to Plaintiff's state law action. However, the law is clear that a federal

1 defense, including the defense of preemption, does not confer federal question  
2 jurisdiction. *Dennis*, 724 F.3d at 1253; *see also Franchise Tax Bd. V. Constr.*  
3 *Laborers Vacation Trust*, 463 U.S. 1, 13 (1983). Thus, Defendant has failed to  
4 establish this Court's subject matter jurisdiction over this action. Therefore, the  
5 Court **REMANDS** this action to the Superior Court of San Diego, County of San  
6 Diego.

7 The parties' joint motions for extensions of time to file answers to Plaintiff's  
8 Complaint are **DENIED** as moot.

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10 **IT IS SO ORDERED.**

11 Dated: February 6, 2017



Barry Ted Moskowitz, Chief Judge  
United States District Court