

1  
2  
3  
4  
5  
6 UNITED STATES DISTRICT COURT  
7 SOUTHERN DISTRICT OF CALIFORNIA

8 MARTHA ROJAS and ROGER ROJAS,  
9 Plaintiff,  
10 v.  
11 YGRENE ENERGY FUND, INC. et al.,  
12 Defendant.

Case No.: 18-CV-579 CAB KSC

**DISMISSAL WITHOUT PREJUDICE  
FOR LACK OF SUBJECT MATTER  
JURISDICTION**

13  
14 This matter is before the Court on an order to show cause as to subject matter  
15 jurisdiction. The complaint alleges federal question jurisdiction based solely on a claim  
16 for violation of Title 16, section 429.1, of the Code of Federal Regulations, and  
17 supplemental jurisdiction over the eight state law claims. However, “[t]o acquire federal  
18 jurisdiction, a plaintiff must assert a colorable right to a remedy under a particular federal  
19 statute.” *Carlson v. Coca-Cola Co.*, 483 F.2d 279, 280 (9th Cir. 1973). Title 16, section  
20 429.1, of the Code of Federal Regulations was promulgated pursuant to the Federal Trade  
21 Commission Act (the “FTCA”). See Part 429--Cooling-Off Period for Door-to-Door Sales:  
22 Promulgation of Trade Regulations Rule and Statement of Its Basis and Purpose, 37 Fed.  
23 Reg. 22934-35 (Oct. 26, 1972). The FTCA does not create a private right of action.  
24 *Carlson*, 483 F.2d at 280; *O’Donnell v. Bank of Am., Nat’l Ass’n*, 504 Fed. Appx. 566, 568  
25 (9th Cir. 2013) (“[T]he Federal Trade Commission Act . . . doesn’t create a private right of  
26 action.”); 5 McCarthy on Trademarks and Unfair Competition § 27:119 (5th ed.) (“While  
27 it has often been argued that a private right to sue for a violation of the FTC Act’s  
28 prohibitions should be implied, the courts have consistently held that there is no such

1 private right to sue. That is, only the FTC, as a federal agency, has the power to issue cease  
2 and desist orders, obtain civil penalties, or file suit for violation of the FTC Act.”). Thus,  
3 “it follows that there is no private right of action to enforce the FTC’s promulgated 16  
4 C.F.R. § 429.1.” *Howard v. Burlison Servs., Inc.*, No. 616CV300ORL18TBS, 2017 WL  
5 1862212, at \*2 (M.D. Fla. May 8, 2017). If there is no private right of action to enforce 16  
6 C.F.R. § 429.1, Plaintiffs have not asserted a colorable right to a remedy under a federal  
7 statute, meaning the Court lacks subject matter jurisdiction over this lawsuit.

8 In their response to the Court’s order to show cause, Plaintiffs fail to cite to any  
9 federal court cases holding that consumers have a private right of action under 16 C.F.R. §  
10 429.1 or the FTCA in general. That regulations enacted pursuant to the FTCA provide  
11 benefits or rights to consumers does not necessarily mean that consumers have a right to  
12 sue to enforce such regulations, regardless of whether the relief sought is equitable or  
13 monetary. Only the FTC has the power to file suit for violation of those regulations. *See*  
14 *5 McCarthy on Trademarks and Unfair Competition § 27:119* (5th ed.).

15 In sum, there is no private right of action to sue for violation of the FTC Act. This  
16 prohibition includes regulations promulgated pursuant to the FTC Act. Plaintiffs cite to no  
17 authority to the contrary. Plaintiffs first claim for violation of 16 C.F.R. § 429.1, therefore,  
18 does not assert a colorable right to a remedy obtainable by Plaintiffs via this lawsuit and  
19 cannot serve as a basis for federal question subject matter jurisdiction. Because Plaintiffs  
20 do not assert any other federal claims and because the lack of diversity between Defendants  
21 and Plaintiffs precludes the exercise of diversity jurisdiction, the Court lacks subject matter  
22 jurisdiction over Plaintiffs’ complaint. Accordingly, the complaint is **DISMISSED**  
23 **WITHOUT PREJUDICE** to refiling in state court.

24 It is **SO ORDERED**.

25 Dated: April 10, 2018



26  
27 Hon. Cathy Ann Bencivengo  
28 United States District Judge