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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 DOUGLAS E. TUMLINSON (pro se),
12 DEBORAH A. TUMLINSON (pro se),
13 Plaintiff,

14 v.

15 SELECT PORTFOLIO SERVICES
16 (SPS), CHASE HOME LOAN, REAL
17 INDUSTRY, INC.,
18 Defendant.

Case No.: 18cv1111-CAB-JLB

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


19 On April 23, 2018, Plaintiffs Douglas E. Tumlinson and Deborah A. Tumlinson
20 (“Plaintiffs”) filed a complaint in the Superior Court of the State of California against
21 Defendants Select Portfolio Servicing, Inc. (“SPS”), Chase Home Loans, and Real
22 Industry, Inc., Case No. 37-2018-00019966-CR-OR-CTL (the “State Court Action”),
23 setting forth numerous state law claims regarding the foreclosure of their home. On May
24 31, 2018, Defendant SPS filed a notice of removal, claiming that this Court has original
25 jurisdiction under 28 U.S.C. §1331 because the complaint asserts a claim for declaratory
26 relief that is premised on a violation of the Real Estate Settlement Procedures Act
27 (“RESPA”), 12 U.S.C. §§1601, *et seq.* [Doc. No. 1 at 3, ¶9.]
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1 A review of the complaint shows there is no federal question jurisdiction in this
2 case. All of the causes of action are state law claims. While the claim for declaratory
3 relief does mention Defendants allegedly failing to comply with RESPA, it does not seek
4 RESPA remedies. Rather, Plaintiffs seek a declaration that Defendant SPS had no right
5 to conduct the Trustee's sale for many reasons, including violating RESPA. But Plaintiffs
6 do not seek the statutory damages available under RESPA. *See* 12 U.S.C. §2605(f)(1).
7 Thus, the reference to RESPA in the complaint is incidental and cannot be the basis for
8 removal. *See Rains v. Criterion Systems, Inc.*, 80 F.3d 339, 343-344 (9th Cir.
9 1996)(although a federal statute was referred to in the complaint, the claim sued under
10 did not "arise under" the federal statute; it arose under state law); *Berg v. Leason*, 32
11 F.3d 422, 425-426 (9th Cir. 1994)(incidental federal issues are insufficient for removal).

12 Because Plaintiffs do not assert any federal claims and there are no allegations of
13 diversity between Defendants and Plaintiffs, the Court lacks subject matter jurisdiction
14 over Plaintiffs' complaint. Accordingly, the case is *sua sponte* **REMANDED** to state
15 court.

16 IT IS SO ORDERED.

17 Dated: June 4, 2018

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20 Hon. Cathy Ann Bencivengo
21 United States District Judge
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