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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

TURNER ANSLEY,	)	SA CV 02-12 AHS (MLGx)
	)	
Plaintiff,	)	
	)	
v.	)	ORDER REMANDING CASE TO STATE
	)	COURT AND AWARDED FEES TO
AMERIQUEST MORTGAGE CO.,	)	PLAINTIFF'S COUNSEL
	)	
Defendant.	)	
	)	
	)	
	)	

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I.

PROCEDURAL BACKGROUND

On December 3, 2001, plaintiff filed a Complaint in the Orange County Superior Court, Case No. 01CC00220. Defendant filed a Notice of Removal on January 4, 2002, and a corrected Notice of Removal on January 16, 2002. On February 28, 2002, plaintiff filed a motion to remand and request for attorney's fees. On March 18, 2002, defendant filed an opposition, and plaintiff filed a reply on March 25, 2002.

The matter was noticed for hearing on the Court's April 1, 2002 calendar. The Court found the matter appropriate for resolution on the briefs without oral argument. See Local

1 Rule 7-15 (the Court may dispense with oral argument on any matter  
2 unless otherwise required); Fed. R. Civ. P. 78. The matter was,  
3 therefore, removed from the Court's hearing calendar, the parties  
4 were duly informed, and the motion was taken under submission.

5 Having considered the parties' filings, the pleadings on  
6 file, and the relevant case law, the Court grants plaintiff's  
7 motion for remand. The Court also finds that plaintiff's request  
8 for attorney's fees is well-taken and therefore awards fees under  
9 28 U.S.C. § 1447(c).

## 10 II.

### 11 DISCUSSION

#### 12 A. Summary of Complaint

13 The complaint alleges one claim for violation of the  
14 California Consumer Legal Remedies Act, Civil Code § 1770, et  
15 seq., averring that defendant's mortgage documents contain  
16 prepayment penalty assessment provisions which require payment in  
17 excess of the amounts allowed by California law. Plaintiff's  
18 second claim alleges that the foregoing conduct constitutes unfair  
19 business practices under California Business and Professions Code  
20 § 17200, et seq. Referenced in the complaint, and attached to  
21 plaintiff's motion for remand, is the operative agreement for the  
22 parties' mortgage transaction, with a paragraph describing the  
23 "governing law" which reads in full as follows:

#### 24 12. Governing Law Provision

25 This Note and the related Security

26 Interest are governed by the

27 Alternative Mortgage Transaction

28 Parity Act of 1982, 12 USC § 3802 et

1 seq., and, to the extent not  
2 inconsistent therewith, Federal and  
3 State law applicable to the  
4 jurisdiction of the Property.

5 **B. Motion for Remand**

6 Federal question jurisdiction exists only when the  
7 federal question is apparent on the face of a well-pleaded  
8 complaint. See Caterpillar v. Williams, 482 U.S. 386, 392, 96 L.  
9 Ed. 2d 318, 107 S. Ct. 2425 (1987). The "well-pleaded complaint"  
10 rule "makes the plaintiff the master of the claim; he or she may  
11 avoid federal jurisdiction by exclusive reliance on state law."  
12 Id. Indeed, "a case may not be removed to federal court on the  
13 basis of a federal defense, including the defense of preemption,  
14 even if the defense is anticipated in the plaintiff's complaint,  
15 and even if both parties concede that the federal defense is the  
16 only question truly at issue." Id. at 393 (emphasis in original).

17 However, the preemptive force of a federal statute may,  
18 on occasion, completely preempt a state claim, such that the state  
19 law claim will effectively be considered a federal claim for  
20 purposes of the "well-pleaded complaint" rule. Id. The complete  
21 preemption doctrine is not applicable merely because a state court  
22 would have to interpret a federal statute in order to decide the  
23 merit of a claim. Id. at 398. The preemptive force of the  
24 federal statute must displace any state cause of action for the  
25 alleged violation. Id. at 394. Further, courts are reluctant to  
26 infer federal preemption of fields of traditional state regulation  
27 "unless that was the clear and manifest purpose of Congress."  
28 California Div. of Labor Standards Enforcement v. Dillingham

1 Constr., N.A., Inc., 519 U.S. 316, 325, 136 L. Ed. 2d 791, 117 S.  
2 Ct. 832 (1997).

3 Defendant argues that federal jurisdiction is proper  
4 because plaintiff's claims are completely preempted by the  
5 Alternative Mortgage Transactions Parity Act of 1982, 12 U.S.C. §§  
6 3801, et seq. ("Parity Act") and applicable regulations  
7 promulgated by the Office of Thrift Supervision ("OTS"). See Opp.  
8 at 1:15-16. In support of its position, defendant cites National  
9 Home Equity Mortgage Ass'n v. Face, 239 F.3d 633 (4th Cir. 2001)  
10 and Shinn v. Encore Mortgage Serv., Inc., 96 F. Supp. 2d 419  
11 (D.N.J. 2000). Both courts found that the Parity Act preempted  
12 state laws restricting prepayment fees. See Face, 239 F.3d at  
13 639; Shinn, 96 F. Supp. 2d at 423.

14 Plaintiff, on the other hand, argues that defendant's  
15 arguments go to a defense on the merits but fail to support  
16 removal jurisdiction. For example, plaintiff cites Black v.  
17 Financial Freedom Senior Funding Corp., 92 Cal. App. 4<sup>th</sup> 917 (Cal.  
18 App. 1 Dist. 2001), review denied by California Supreme Court  
19 (Jan. 23, 2002). In Black, plaintiffs filed a state court action  
20 against nonfederally chartered lenders and their employees for  
21 violating several state laws in the marketing of reverse  
22 mortgages. Id. The trial court granted defendants' motion for  
23 summary judgment on the basis that federal laws, including the  
24 Parity Act, preempted plaintiffs' claims. Id.

25 On appeal, the court in Black construed § 3803(c) of the  
26 Parity Act to reserve ample room for state regulation because  
27 there were only four federal regulations with which the  
28 transactions of housing creditors must comply. Id. at 930. The

1 Black court held that the Parity Act did not expressly or  
2 impliedly preempt all state laws concerning the terms and  
3 marketing of alternative mortgage transactions and reversed the  
4 entry of summary judgment for defendants. Id. at 931.

5 As plaintiff suggests, the cases relied on by defendant,  
6 Face and Shinn, are distinguishable from this case. While these  
7 cases dealt with whether the Parity Act preempted state law,  
8 neither case held that the Parity Act completely preempted state  
9 law so as to confer exclusive federal jurisdiction. See Face, 239  
10 F.3d at 636; Shinn, 96 F. Supp. 2d at 420. The fact that the  
11 Parity Act may preempt plaintiff's claims is not sufficient to  
12 establish jurisdiction in federal court. See Caterpillar, 482  
13 U.S. at 393. That fact, if it is a fact, goes to the merits of  
14 defendant's defense. In order for the district court to have  
15 jurisdiction over plaintiff's claims, the Parity Act must  
16 completely preempt all California laws that could relate to  
17 alternative mortgage transactions, such that plaintiff could not  
18 maintain any claim under state law. Id.

19 "[T]he Parity Act and the regulations, to which it  
20 explicitly refers, provide that when a non-federally chartered  
21 housing creditor elects to be governed by federal law and complies  
22 with that law," the creditor may charge prepayment fees greater  
23 than those authorized by state law. Face, 239 F.3d at 639. Face  
24 recognized that the Parity Act allows creditors to make loans  
25 pursuant to federal guidelines if the creditor meets specific  
26 qualifications and if it follows the federal regulations. Some  
27 loans do not qualify to "reap the benefits of the Parity Act's  
28 preemption." See Shinn, 96 F. Supp. 2d at 423. The Parity Act

1 does not control every alternative mortgage issued by every  
2 creditor in every situation. Accordingly, it cannot be said that  
3 the Parity Act completely preempts California law for  
4 jurisdictional purposes.

5 It should be emphasized that this Order of remand does  
6 not decide whether the Parity Act does or does not preempt  
7 plaintiff's state law claims. Whether defendant's loan qualifies  
8 to be regulated by the Parity Act and whether the Parity Act  
9 preempts plaintiff's claims are questions going to the merits of  
10 plaintiff's claims and defendant's defense and must be decided by  
11 the court hearing the case. Resolution of these issues is  
12 separate and apart from the jurisdictional analysis.

13 **C. Request for Attorney's Fees**

14 Title 28 U.S.C. § 1447(c) provides, in relevant part,  
15 that "[a]n order remanding the case may require payment of just  
16 costs and any actual expenses, including attorney fees, incurred  
17 as a result of the removal." A court may award attorney's fees  
18 when a defendant's removal is wrong as a matter of law. Balcorta  
19 v. Twentieth Century Fox-Film, 208 F.3d 1102, 1106 n.6 (9<sup>th</sup> Cir.  
20 2000); see also Moore v. Permanente Med. Group, Inc., 981 F.2d  
21 443, 448 (9<sup>th</sup> Cir. 1992) (bad faith need not be demonstrated to  
22 award fees). The Court notes that defendant did not, and  
23 presumably cannot, provide any authority in support of its  
24 argument that the Parity Act completely preempts California law so  
25 as to justify removal. As earlier discussed, state court  
26 jurisdiction is evident. Based on the declarations of plaintiff's  
27 counsel, the Court finds an award of attorney's fees in the amount  
28 of \$3,600 just and proper.

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3 **III.**

4 **CONCLUSION**

5 Accordingly, and for the reasons discussed above, the  
6 Court remands this action to the Superior Court of California for  
7 the County of Orange. In addition, the Court grants plaintiff's  
8 request for attorney's fees. Defendant is ordered to pay  
9 forthwith to counsel for plaintiff the sum of \$3,600.

10 IT IS SO ORDERED.

11 IT IS FURTHER ORDERED that the Clerk shall serve a copy  
12 of this Order on counsel for all parties in this action. The  
13 Clerk shall also provide a copy to the Clerk of the Orange County  
14 Superior Court for filing in Case Number 01CC00220.

15 DATED: April \_\_, 2002.

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ALICEMARIE H. STOTLER  
UNITED STATES DISTRICT JUDGE