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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

CHRISTIAN WELLISCH,

Plaintiff,

v.

PENNSYLVANIA HIGHER EDUCATION
ASSISTANCE AGENCY, et al.,

Defendants.

Case No. [17-cv-00213-BLF](#)

**ORDER GRANTING IN PART
WITHOUT LEAVE TO AMEND
DEFENDANT PHEAA’S MOTION TO
DISMISS; GRANTING WITHOUT
LEAVE TO AMEND DEFENDANT
PRESTON’S MOTION TO DISMISS;
REMANDING REMAINING STATE
LAW CLAIMS AGAINST PHEAA TO
STATE COURT**

[Re: ECF 68, 70]

This case involves Captain Christian Wellisch’s (“Captain Wellisch”) claims related to Pennsylvania Higher Education Assistance Agency’s (“PHEAA”) servicing of Captain Wellisch’s student loans while he was on active duty as a commissioned officer in the California Army National Guard. *See* First Amended Complaint (“FAC”) ¶¶ 10-12, ECF 58. Before the Court are two motions to dismiss the FAC filed by each of the Defendants in this case: PHEAA and its President and Chief Executive Officer, James L. Preston (“Preston”) (collectively “Defendants”). *See generally* PHEAA Mot., ECF 68; Preston Mot., ECF 70.

Although this case has been stayed under the Servicemembers Civil Relief Act (“SCRA”), 50 U.S.C. § 3901 *et. seq.*, the Court made clear in its January 30, 2018 Order that the 90-day stay expired on its own on April 30, 2018. ECF 74 at 2. The Court directed Captain Wellisch, who

1 had requested and been granted several extensions of the stay, to request to extend the stay at least
2 ten (10) days before April 30, 2018. *Id.* Captain Wellisch did not request to extend the stay, and
3 he did not timely file an opposition to Defendants’ motions to dismiss.

4 Pursuant to Civ. L.R. 7-1(b), the Court finds Defendants’ motions suitable for submission
5 without oral argument and hereby VACATES the hearing scheduled for June 7, 2018. For the
6 reasons stated herein, PHEAA’s motion to dismiss is GRANTED WITHOUT LEAVE TO
7 AMEND as to Captain Wellisch’s federal claims for violations of the SCRA and declaratory
8 relief. Preston’s motion to dismiss is GRANTED WITHOUT LEAVE TO AMEND. Moreover,
9 in the exercise of its discretion, the Court DECLINES to retain supplemental jurisdiction over the
10 remaining state law claims asserted against PHEAA and REMANDS this case to the Monterey
11 County Superior Court.

12 **I. BACKGROUND**

13 The facts of this case are familiar to the parties and the Court and are set forth in this
14 Court’s Prior Order Granting Defendants’ Motions to Dismiss. ECF 52 (“Prior Order”). Plaintiff
15 is a Captain in the California Army National Guard, and was called up to active duty several
16 times, including serving overseas on two occasions in (1) February to September of 2015; and (2)
17 February to October 2016. FAC ¶ 11. Captain Wellisch alleges that “Defendants” are servicers
18 for 11 separate student loans obtained by Captain Wellisch prior to his military service, disbursed
19 on various dates from August 2010 to September 2012. *Id.* ¶ 12.¹

20 While he was on active duty overseas, Captain Wellisch lost his eligibility for Income-
21 Based Repayment (“IBR”) of his student loans. FAC ¶¶ 20-22, 24. The College Cost Reduction
22 and Access Act established various programs such as Income-Driven Repayment (“IDR”), which
23 is a group of repayment plans that includes IBR. 34 C.F.R. § 682.215; FAC ¶ 17. Captain
24 Wellisch alleges that he attempted to recertify his eligibility for reduced payments in a timely
25 manner, including requesting guidance from PHEAA and a stay in determination of his eligibility
26 for the IBR plan. FAC ¶ 20. PHEAA did not provide a stay and determined that Captain Wellisch

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28 ¹ Preston is the President and CEO of PHEAA, the loan servicer. FAC ¶ 7. As discussed below, Captain Wellisch has failed to allege a cognizable claim against Preston in his individual capacity.

1 was no longer eligible for the IBR plan. *Id.* ¶¶ 20-24, 37. This determination triggered
2 capitalization of interest on his loans and resulted in increased monthly payment amounts. *Id.*

3 Captain Wellisch filed this action in Monterey County Superior Court on December 28,
4 2016, alleging that Defendants failed to comply with the Federal Servicemembers Civil Relief Act
5 (“SCRA”) and the California Military and Veterans Code (“CMVC”) and other state law claims.
6 *See* ECF 1-2. Defendants removed the action to this Court on January 17, 2017 based on federal
7 question jurisdiction in light of the SCRA claim. *See* ECF 1. Captain Wellisch moved to remand,
8 which the Court denied in an order on March 21, 2017. ECF 31. Upon Captain Wellisch’s motion
9 for reconsideration, the Court severed and remanded Captain Wellisch’s Petition for Relief from
10 Financial Obligation During Military Service pursuant to CMVC section 409.3 (“MIL 010
11 Petition”). ECF 40. The Court stayed Captain Wellisch’s CMVC 409.3 claim in his civil
12 complaint pending the outcome of the petition in state court. *Id.* at 4.

13 Defendants each moved to dismiss the Complaint, which the Court granted with leave to
14 amend. On June 21, 2017, the Court *sua sponte* amended its Order. *See* Prior Order.² Captain
15 Wellisch filed the operative FAC on July 14, 2017, asserting claims against PHEAA for
16 (1) declaratory relief; (2) relief pursuant to CMVC § 403; (3) relief pursuant to CMVC § 409.3;
17 (4) unfair business practices pursuant to California Business & Professions Code § 17200;
18 (5) violations of the SCRA; and (6) suppression of fact pursuant to California Civil Code
19 § 1710(3). FAC ¶¶ 25-54. The only claim alleged against Preston is the SCRA claim. *Id.* ¶¶ 42-
20 48.

21 On July 27, 2017, the Court stayed the case until January 15, 2018 at the request of
22 Captain Wellisch. ECF 65. The Court extended the stay upon Captain Wellisch’s request, until
23 the stay expired on its own on April 30, 2018. ECF 74. The stay expired on that date
24 automatically as provided in the Order. No request to extend was filed with the Court. While this
25 action was stayed, the Monterey County Superior Court issued its ruling and order on Captain
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27 ² In relevant part, the Court amended its Order advising Captain Wellisch that in order to sustain
28 his SCRA claim, he must allege facts sufficient to support his allegation that PHEAA was acting
as a court or agency when it denied his IBR request. *See* ECF 51.

1 Wellisch’s MIL 010 Petition under CMVC 409.3 on December 29, 2017. *See* PHEAA’s Request
2 for Judicial Notice (“RJN”) Exh. A, ECF 69.³ The Court now turns to Defendants’ pending
3 motions to dismiss.

4 **II. LEGAL STANDARD**

5 “A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a
6 claim upon which relief can be granted ‘tests the legal sufficiency of a claim.’” *Conservation*
7 *Force v. Salazar*, 646 F.3d 1240, 1241–42 (9th Cir. 2011) (quoting *Navarro v. Block*, 250 F.3d
8 729, 732 (9th Cir. 2001)). When determining whether a claim has been stated, the Court accepts as
9 true all well-pled factual allegations and construes them in the light most favorable to the plaintiff.
10 *Reese v. BP Exploration (Alaska) Inc.*, 643 F.3d 681, 690 (9th Cir. 2011). However, the Court
11 need not “accept as true allegations that contradict matters properly subject to judicial notice” or
12 “allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable
13 inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (internal quotation
14 marks and citations omitted). While a complaint need not contain detailed factual allegations, it
15 “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible
16 on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550
17 U.S. 544, 570 (2007)). A claim is facially plausible when it “allows the court to draw the
18 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

19 **III. DISCUSSION**

20 PHEAA moves to dismiss each of the six causes of action in the FAC for failure to state a
21 claim upon which relief can be granted. *See generally* PHEAA Mot. Preston also moves to
22 dismiss the FAC, although only one cause of action for violations of the SCRA is explicitly
23 alleged against him. *See generally* Preston Mot. Although the Court provided Captain Wellisch
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25 ³ PHEAA’s request for judicial notice of the state court order on Captain Wellisch’s petition is
26 GRANTED. The Court may take judicial notice of matters that are either “generally known within
27 the trial court’s territorial jurisdiction” or “can be accurately and readily determined from sources
28 whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Public records, including
judgments and other court documents, are proper subjects of judicial notice. *See, e.g., United*
States v. Black, 482 F.3d 1035, 1041 (9th Cir. 2007).

1 with a deadline to respond to the motions after the stay lifted (ECF 74), Captain Wellisch did not
2 file any opposition.

3 For the reasons that follow, PHEAA’s motion to dismiss is GRANTED WITHOUT
4 LEAVE TO AMEND as to Captain Wellisch’s SCRA claim as well as his declaratory relief claim
5 based thereon. Preston’s motion to dismiss is GRANTED WITHOUT LEAVE TO AMEND.
6 Having dismissed the federal claims that form the basis of federal subject matter jurisdiction in
7 this Court, the Court exercises its discretion and DECLINES to retain supplemental jurisdiction
8 over the state law claims asserted against PHEAA and REMANDS this case to Monterey County
9 Superior Court.

10 **A. PHEAA’s Motion to Dismiss**

11 **i. Servicemembers Civil Relief Act**

12 Captain Wellisch renews his SCRA claim against PHEAA and Preston, alleging that he
13 repeatedly sought the benefits of a stay pursuant to procedures outlined in 50 U.S.C. § 3932, but
14 PHEAA did not provide any relief analogous to a stay. FAC ¶¶ 44-46. Captain Wellisch further
15 alleges, without material difference from the original complaint, that the increased monthly
16 payment amounts and capitalized interest constitute penalties incurred during military service, and
17 his ability to perform was materially affected by such military service, and thus asks the Court to
18 waive all payments and capitalized interest above the otherwise applicable IBR plan payment
19 amounts pursuant to section 3933 of the SCRA. *Id.* ¶¶ 47-48. PHEAA moves to dismiss the
20 SCRA claim for the same reasons the Court dismissed the claim in the original complaint—
21 namely, that §§ 3932 and 3933 cannot apply to the facts alleged. *See* PHEAA Mot. at 12.

22 The SCRA was passed “to enable [servicemembers] to devote their entire energy to the
23 defense needs of the Nation.” 50 U.S.C. § 3902(1). It accomplishes this purpose by imposing
24 limitations on judicial proceedings that could take place while a member of the armed forces is on
25 active duty, including insurance, taxation, loans, contract enforcement, and other civil actions. *Id.*
26 § 3901 *et seq.* These limitations are “always to be liberally construed to protect those who have
27 been obliged to drop their own affairs to take up the burdens of the nation.” *Boone v. Lightner*,
28 319 U.S. 561, 575 (1943) (granting a stay in state trustee proceedings); *see also Le Maistre v.*

1 *Leffers*, 333 U.S. 1, 6 (1948) (overturning a state tax sale by giving a broad construction to the
2 SCRA in light of its “beneficent purpose” and noting that “the Act must be read with an eye
3 friendly to those who dropped their affairs to answer their country’s call”); *Brewster v. Sun Trust*
4 *Mortg., Inc.*, 742 F.3d 876, 878 (9th Cir. 2014).

5 Section 3932 of the SCRA allows a service member on military duty to move to stay any
6 judicial or administrative proceeding initiated against him or to move to stay the execution of any
7 judgment entered against him. 50 U.S.C. § 3932(a)–(b). Section 3932 applies “to any civil action
8 or proceeding . . . in which the plaintiff or defendant at the time of filing an application under this
9 section (1) is in military service or is within 90 days after termination of or release from military
10 service; and (2) has received notice of the action or proceeding.” *Id.* § 3932(a). Section 3933
11 provides that when an action is stayed pursuant to section 3932, “a penalty shall not accrue for
12 failure to comply with the terms of the contract during the period of the stay.” *Id.* § 3933(a).

13 In relevant part, section 3912 of the SCRA provides, “[t]his chapter applies to any judicial
14 or administrative proceeding commenced in any court or agency in any jurisdiction subject to this
15 chapter.” 50 U.S.C. § 3912. The Court previously held that although PHEAA *could be* subject to
16 the SCRA as “a statutorily created instrumentality of the Commonwealth of Pennsylvania,”
17 Captain Wellisch failed to allege facts showing that PHEAA initiated, at any point, a “judicial or
18 administrative proceeding” while servicing Captain Wellisch’s loans. *See* Prior Order at 5.
19 Captain Wellisch has not materially amended these allegations in the FAC. His allegation that the
20 definition of “court” in § 3911 includes administrative agencies and political subdivisions of a
21 state, such as PHEAA, and that “[a]gencies are to implement those of SCRA’s requirements
22 described in terms generally used for judicial proceedings via analogous agency proceedings,” is
23 insufficient to state a plausible claim that PHEAA’s servicing of Captain Wellisch’s loans was
24 subject to §§ 3932 and 3933. FAC ¶ 44. Despite the Court’s directive to Captain Wellisch to add
25 factual allegations in support of his claim that PHEAA acted as a court or agency when it
26 performed its function as a loan servicer—or initiated a “judicial or administrative proceeding”
27 against him that entitled him to relief analogous to a stay—Captain Wellisch fails to allege facts
28 rendering his SCRA claim plausible. *See* 50 U.S.C. § 3912.

1 For the foregoing reasons, as well as those discussed in the Prior Order, Captain Wellisch
2 has not stated a claim for relief under the SCRA. Accordingly, PHEAA’s motion to dismiss the
3 fifth cause of action for violations of the SCRA is GRANTED WITHOUT LEAVE TO AMEND.

4 **ii. Declaratory Relief**

5 The FAC includes a claim for declaratory relief against PHEAA, based on two separate
6 grounds: (1) Captain Wellisch’s entitlement to declaratory relief pursuant to SCRA § 4042(a); and
7 (2) the existence of an actual controversy between Captain Wellisch and PHEAA concerning their
8 respective rights and duties. *See* FAC ¶¶ 25-28. The Court addresses each in turn.

9 Section 4042(a) of the SCRA provides in relevant part that “[a]ny person aggrieved by a
10 violation of this chapter may in a civil action – (1) obtain any appropriate equitable or declaratory
11 relief with respect to the violation.” 50 U.S.C. § 4042 (a)(1) (West). Captain Wellisch alleges that
12 due to the several violations of the SCRA alleged in the FAC, he wishes to invoke his right to
13 declaratory relief. FAC ¶ 26. The Court finds that the declaratory relief claim based on SCRA
14 violations is deficient for the same reasons discussed above regarding Captain Wellisch’s failure
15 to allege facts to support his fifth cause of action for SCRA violations. Because Captain Wellisch
16 has failed to plausibly allege that PHEAA’s servicing of his student loans was a “civil action or
17 proceeding,” he has not stated a claim against PHEAA for violations of §§ 3932 and 3933, and is
18 not entitled to declaratory relief pursuant to § 4042(a).

19 With respect to the alleged “actual controversy,” Captain Wellisch alleges that PHEAA has
20 denied (1) Captain Wellisch’s right under the SCRA and CMVC to affect a stay in the
21 determination of his eligibility for IBR; (2) that PHEAA is an agency subject to the SCRA’s
22 jurisdiction under 50 U.S.C. § 3912 (a), and that under §§ 3912 (b) and (c) determinations made
23 by PHEAA affecting Captain Wellisch’s rights are proceedings to which relevant sections of
24 SCRA are applicable; (3) that PHEAA cannot participate in any litigation activities in California
25 due to forfeiture of its rights, as a previously registered foreign corporation that incurred such
26 penalties for its failure to comply with filing and tax obligations; and (4) that Defendant Preston,
27 as PHEAA’s chief executive, can be subject to an injunction as necessary to avoid violation of
28 federal law. *See* FAC ¶ 27(a)-(d).

1 As discussed above, the Court finds that Captain Wellisch has not adequately pled his right
2 to a stay under the SCRA, and therefore this is not a valid basis for declaratory relief.⁴ Similarly,
3 Captain Wellisch has not alleged facts to support his claim that PHEAA’s determinations affecting
4 his rights are applicable “proceedings” under the SCRA, and declaratory relief is inappropriate on
5 these grounds as well. As to whether PHEAA may litigate in California due to “forfeiture of its
6 rights,” the Court has already resolved this issue *twice*. See ECF 31, 52. After a hearing and
7 briefing on the matter, the Court rejected outright Captain Wellisch’s argument that PHEAA is
8 legally barred from taking any litigation action as a suspended corporation. *Id.* The Court now
9 determines for the third time that PHEAA can properly litigate this action because it does not
10 conduct business within California and is not required to be registered to do business there.
11 Captain Wellisch’s attempt to use this previously rejected argument as a basis for declaratory
12 relief is unavailing.

13 Finally, Captain Wellisch’s declaratory relief claim based on whether Preston can be
14 subject to an injunction as PHEAA’s chief executive fails for the reasons discussed below in
15 connection with Preston’s motion to dismiss—including the obvious issue that the declaratory
16 relief claim in the FAC is not actually alleged against Preston. See FAC ¶¶ 25-28.

17 For the foregoing reasons, PHEAA’s motion to dismiss the first cause of action for
18 declaratory relief is GRANTED IN PART WITHOUT LEAVE TO AMEND. The Court finds
19 that Captain Wellisch has not stated a federal claim against Defendants upon which declaratory
20 relief can be granted. However, for the reasons discussed below regarding the exercise of
21 supplemental jurisdiction over the state law claims, the Court declines to rule on whether Captain
22 Wellisch is entitled to declaratory relief based on violations of the CMVC or other state law.

23 **B. Preston’s Motion to Dismiss**

24 Turning to Preston’s motion to dismiss, the Court finds that the FAC still fails to allege a
25 plausible claim that Preston is personally liable for PHEAA’s acts related to the servicing of
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27 _____
28 ⁴ For the reasons discussed below regarding Captain Wellisch’s state law claims, the Court declines to exercise jurisdiction over the state law claims—including whether Captain Wellisch is entitled to declaratory relief for alleged violations of the CMVC or other state law.

1 Captain Wellisch’s student loans. The FAC only refers to Preston twice: once to identify him as
2 the President and CEO of PHEAA (FAC ¶ 7) and again in a conclusory allegation that as
3 PHEAA’s chief executive, Preston “can be subject to an injunction as necessary to avoid violation
4 of federal law.” FAC ¶ 27(d). Despite this latter reference to Preston in Captain Wellisch’s first
5 cause of action for declaratory relief, the only claim brought against Preston is the fifth cause of
6 action pursuant to the SCRA. FAC ¶¶ 42-48. Other than these sparse allegations, Captain
7 Wellisch groups the Defendants together and fails to allege any facts permitting the Court to infer
8 that Preston is personally liable for any of PHEAA’s alleged actions or inactions.

9 Despite being ordered to do so in the Court’s Prior Order, Captain Wellisch has not set
10 forth facts regarding Preston’s allegedly unlawful conduct. *See* Prior Order at 7. The FAC alleges
11 nothing more than that Preston was the President and CEO of PHEAA, which is insufficient to
12 state a plausible claim. *Iqbal*, 556 U.S. at 678 (2009) (holding that a claim is facially plausible
13 when it “allows the court to draw the reasonable inference that the defendant is liable for the
14 misconduct alleged.”) (quoting *Twombly*, 550 U.S. at 570). In any event, the above analysis with
15 respect to Captain Wellisch’s SCRA claim against PHEAA applies equally to Captain Wellisch’s
16 SCRA claim against Preston. Moreover, without factual allegations or valid claims asserted
17 against Preston, Captain Wellisch has not alleged an “actual controversy” as to whether Preston
18 “can be subject to an injunction as necessary to avoid violation of federal law.” FAC ¶ 27(d).

19 Accordingly, Preston’s motion to dismiss the FAC is GRANTED WITHOUT LEAVE TO
20 AMEND.

21 **C. Leave to Amend**

22 Having determined that Captain Wellisch’s SCRA and declaratory relief claims based
23 thereon are subject to dismissal, the Court considers whether leave to amend is warranted. The
24 Court does not deny leave to amend lightly. Leave ordinarily must be granted unless one or more
25 of the following factors is present: (1) undue delay, (2) bad faith or dilatory motive, (3) repeated
26 failure to cure deficiencies by amendment, (4) undue prejudice to the opposing party, and
27 (5) futility of amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *see also Eminence*
28 *Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).

1 The Court finds no undue delay or bad faith. However, despite the Court’s Prior Order
2 dismissing the original complaint with extensive guidance regarding amendment, Captain
3 Wellisch still has not alleged plausible claims under the SCRA or against Preston. Moreover,
4 although Captain Wellisch added the claim for declaratory relief to the FAC, it is based on
5 allegations and arguments that the Court has previously rejected. After two motions to dismiss,
6 the Court finds that Captain Wellisch has failed to cure the previously identified deficiencies by
7 amendment and further leave to amend the dismissed claims would be futile. *See Zucco Partners,*
8 *LLC v. Digimarc Corp.*, 552 F.3d 981, 1007 (9th Cir. 2009), *as amended* (Feb. 10, 2009) (finding
9 that a plaintiff’s failure to correct identified deficiencies in an amended pleading “is a strong
10 indication that the plaintiffs have no additional facts to plead.”); *Salameh v. Tarsadia Hotel*, 726
11 F.3d 1124, 1133 (9th Cir. 2013) (“A district court’s discretion to deny leave to amend is
12 particularly broad where the plaintiff has previously amended.”). The Court also finds that
13 Defendants—and Preston in particular—would be prejudiced by further amendment as they have
14 already prevailed on their arguments to dismiss the federal claims asserted against them and
15 Captain Wellisch has completely failed to articulate any cognizable claim against Preston in his
16 personal capacity.

17 Weighing the *Foman* factors, the Court finds that Captain Wellisch’s claim for violations
18 of the SCRA against PHEAA and Preston, as well as the declaratory relief claim based thereon,
19 shall be DISMISSED WITHOUT LEAVE TO AMEND.

20 **D. Remaining State Law Claims**

21 PHEAA also moves to dismiss Captain Wellisch’s state law claims. However, the Court
22 has dismissed all of Captain Wellisch’s federal claims with prejudice. Thus, there is no longer a
23 basis for original jurisdiction in this Court. PHEAA removed the case based on the SCRA claim.
24 ECF 1 ¶ 9. In denying Captain Wellisch’s motion to remand earlier in this case, the Court
25 concluded that it had subject matter jurisdiction over this action based solely on the federal SCRA
26 claim. ECF 31 at 5; *see also* Prior Order at 3 (finding that the SCRA allegations provide the basis
27 for this Court’s jurisdiction).

28 In this situation, it is within the Court’s discretion whether to exercise supplemental

1 jurisdiction over the remaining claims. *See* 28 U.S.C. § 1367(c) (“The district courts may decline
2 to exercise supplemental jurisdiction over a claim under subsection (a) if ... the district court has
3 dismissed all claims over which it has original jurisdiction”); *see also Carlsbad Tech., Inc. v. HIF*
4 *BIO, Inc.*, 556 U.S. 635 (2009); *Sanford v. MemberWorks, Inc.*, 625 F.3d 550, 561 (9th Cir. 2010).
5 “[I]n the usual case in which all federal-law claims are eliminated before trial, the balance of
6 factors to be considered under the pendent jurisdiction doctrine-judicial economy, convenience,
7 fairness, and comity-will point toward declining to exercise jurisdiction over the remaining state-
8 law claims.” *Carnegie–Mellon Univ. v. Cohill*, 484 U.S. 343, 351 (1988), *superseded on other*
9 *grounds by statute as recognized in Fent v. Okla. Water Res. Bd.*, 235 F.3d 553, 557 (10th
10 Cir.2000).

11 Here, the Court finds that because the federal claims have been eliminated at the pleading
12 stage, and all the remaining claims are state law claims, it is in the interests of judicial economy,
13 convenience, fairness, and comity to remand the remaining claims. The Court perceives no reason
14 why the remaining state law claims in the FAC should be litigated in federal court, particularly in
15 light of PHEAA’s res judicata argument that is based on the state court’s determination of Captain
16 Wellisch’s MIL 010 Petition. *See* PHEAA Mot. at 10-11. The early stage of these proceedings,
17 with trial scheduled nearly two years away in February 2020, further supports remanding the
18 remaining state law claims. The Court also finds that remand will not impair either party’s rights.
19 Accordingly, in the exercise of its discretion, the Court declines to retain supplemental jurisdiction
20 over Captain Wellisch’s remaining state law claims against PHEAA and hereby REMANDS this
21 action to Monterey County Superior Court.

22 **IV. ORDER**

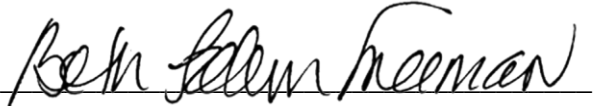
23 For the foregoing reasons, IT IS HEREBY ORDERED that:

- 24 (1) PHEAA’s motion to dismiss is GRANTED WITHOUT LEAVE TO
25 AMEND as to Captain Wellisch’s fifth cause of action for violations of the
26 SCRA and his first cause of action for declaratory relief based thereon;
- 27 (2) Preston’s motion to dismiss is GRANTED WITHOUT LEAVE TO
28 AMEND;

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- (3) The remaining claims in this litigation are state law claims asserted against PHEAA. Accordingly, the Court declines to exercise supplemental jurisdiction and REMANDS this case to Monterey County Superior Court;
- (4) The Clerk shall close the file.

Dated: June 1, 2018


BETH LABSON FREEMAN
United States District Judge