

1 **WO**

2 NOT FOR PUBLICATION

3
4
5

6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8

9 ENRIQUE FIDENCIO SOTO,) No. CV-09-0438-PHX-GMS

10 Plaintiff,)

ORDER

11 vs.)

12 AMERICA'S SERVICING COMPANY;))
13 US BANK NATIONAL ASSOCIATION,))
14 as TRUSTEE FOR WACHOVIA LOAN))
15 TRUST SERIES 2006 AMN-1,)

16 Defendants.)

_____)

17 Pending before the Court is the Motion to Dismiss of Defendants US Bank National
18 Association and America's Servicing Company. (Dkt. # 13.) For the following reasons, the
19 Court remands the case to the Arizona Superior Court.

20 On February 5, 2009, Plaintiff Enrique Soto filed a complaint in the Arizona Superior
21 Court which asserted various state and federal claims. (Dkt. # 1 Pt. 2 at 4-11.) Specifically,
22 Plaintiff alleged violations of the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601 *et seq.*;
23 (2) the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2601 *et seq.*; (3) the
24 Home Ownership Equity Protection Act ("HOEPA"), 15 U.S.C. § 1639 *et seq.*; and (4) the
25 Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.* (Dkt. # 1 Pt. 2 at
26 6-10.) On March 4, 2009, Defendants removed the case, asserting that this Court has original
27 federal question jurisdiction because the action "arises under the Federal Fair Debt Collection
28 Practices Act." (Dkt. # 1 at 1.) After removal, Plaintiff filed a First Amended Complaint

1 (“FAC”), in which he removed all previously pled federal claims.¹ (Dkt. # 11.) The FAC
2 contains only two claims: (1) declaratory relief pursuant to Arizona’s declaratory relief
3 statute that involves matters of Arizona law; and (2) wrongful foreclosure under Arizona law.
4 (*Id.* ¶¶ 29-43.)

5 Generally, the propriety of removal jurisdiction is determined at the time of removal,
6 *Pullman Co. v. Jenkins*, 305 U.S. 534, 537 (1939), and “a federal court does have the power
7 to hear claims that would not be independently removable even after the basis for removal
8 jurisdiction is dropped from the proceedings,” *Swett v. Schenk*, 792 F.2d 1447, 1450 (9th Cir.
9 1986). The Ninth Circuit has additionally held that a plaintiff cannot compel remand merely
10 by amending their complaint to eliminate federal claims which provided the basis for
11 removal. *Sparta Surgical Corp. v. Nat’l Ass’n of Sec. Dealers, Inc.*, 159 F.3d 1209, 1213
12 (9th Cir. 1998). However, federal courts have the discretion to remand remaining pendent
13 state law claims when retaining jurisdiction would be inappropriate. *Harrell v. 20th Century*
14 *Ins. Co.*, 934 F.2d 203, 205 (9th Cir. 1991); *see also Acri v. Varian Assocs., Inc.*, 114 F.3d
15 999, 1000 (9th Cir. 1997) (“[A] federal district court with power to hear state law claims has
16 discretion to keep, or decline to keep, them under the conditions set out in § 1367(c).”).

17 Title 28 U.S.C. § 1367(c) permits the district court to decline to exercise supplemental
18 jurisdiction over a claim if all claims have been dismissed over which the court had original
19 jurisdiction. The discretionary decision is informed by the values of “economy, convenience,
20 fairness, and comity.” *Acri*, 114 F.3d at 1001. The United States Supreme Court has held
21 that “in the usual case in which all federal-law claims are eliminated before trial, the balance
22 of factors . . . will point toward declining to exercise jurisdiction over the remaining state-law
23 claims.” *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988); *see also Harrell*,

24
25 ¹In the FAC, Plaintiff states that he “[does] not dispute the jurisdiction of this Court
26 . . . as the claims originally involved federal questions. Given the current posture of this
27 case, Plaintiff believes the remaining actions to be based in state law . . . and to be properly
28 resolved by the Superior Court. Nonetheless, should this Court choose to exercise
supplemental jurisdiction, Plaintiff will not dispute this federal Court’s choice to do so and
fully submit to jurisdiction here.” (Dkt. # 11 ¶ 26.)

1 934 F.2d at 205 (holding that in the usual case “it is generally preferable for a district court
2 to remand remaining pendent claims to state court”).

3 In this case, the balance of factors counsel that the Court should decline to exercise
4 jurisdiction over the remaining state law claims in the FAC. No judicial economy will be lost
5 at this early stage in returning the case to state court, and it will certainly be as convenient
6 and fair to the parties to litigate the state law claims in state court. Moreover, as several of
7 the issues in this case may require interpretation of Arizona law, the Arizona courts are a
8 preferable forum for obtaining an interpretation of that law. Therefore, the Court declines
9 to exercise jurisdiction over Plaintiff’s remaining claims.

10 Because the Court has declined jurisdiction over Plaintiff’s state law claims, the Court
11 declines to rule on Defendants’ Motion to Dismiss.

12 **IT IS THEREFORE ORDERED** that Case No. CV-09-0438-PHX-GMS is
13 **REMANDED** to the Superior Court of the State of Arizona.

14 DATED this 30th day of June, 2009.

15
16 
17 _____
18 G. Murray Snow
19 United States District Judge
20
21
22
23
24
25
26
27
28