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NOT FOR PUBLICATION

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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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John-Raymond Nichols, *pro per*

No. CV-10-01872-PHX-FJM

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Plaintiff,

ORDER

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vs.

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Michael A. Bosco, Jr., et. al.,

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Defendants.

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The court has before it plaintiff's motion to remand (doc. 11), defendants Wells Fargo Bank and John G. Stumpf's (collectively "the Wells Fargo defendants") response (doc. 21), plaintiff's reply (doc. 38), plaintiff's motion for leave to amend the complaint (doc. 17), and the Wells Fargo defendant's response (doc. 35).

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Plaintiff filed this action on August 25, 2010 in the Superior Court of Arizona in Maricopa County (doc. 1, ex. A). The complaint named several national banks, their officers, and the foreclosure trustee, and asserted claims of fraud, lack of standing to foreclose, and violations of various federal statutes including: (1) the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 *et seq.* ("RESPA"); (2) the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.* ("TILA"); and (3) the Fair Credit Reporting Act, 15 U.S.C. § 1681 ("FCRA"). The Wells Fargo defendants removed the case to this court on September 1, 2010 (doc. 1). Plaintiff filed a motion to remand on September 8, 2010 arguing that we lack

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1 jurisdiction because: (1) state law claims predominate over the "mere possibility of federal
2 questions;" (2) 28 U.S.C. § 1441(b) precludes removal because defendant Michael A. Bosco
3 resides in Arizona; and (3) we cannot assume jurisdiction over the State of Arizona. (Motion
4 to Remand at 7). On September 20, 2010, plaintiff filed a motion for leave to amend his
5 complaint (doc. 17). The proposed amended complaint makes no material changes other than
6 substituting certain defendants. The Wells Fargo defendants do not oppose it (doc. 35).

7 **I. Motion to Amend**

8 Rule 15(a)(1), Fed. R. Civ. P. permits a party to amend its pleading once as a matter
9 of right within 21 days after service of a motion under Rule 12(b), Fed. R. Civ. P.. Plaintiff
10 filed his first motion for leave to amend within 21 days of such a motion and therefore was
11 permitted to amend his complaint without leave of court. Accordingly, plaintiff's motion for
12 leave to amend his complaint is granted.¹

13 **II. Motion to Remand**

14 Plaintiff challenges the Wells Fargo defendants' removal based on lack of subject
15 matter jurisdiction, which he may do at any time before final judgment. 28 U.S.C. § 1447(c).
16 Except where Congress expressly provides otherwise, a defendant may remove a civil action
17 if the federal district court would have original jurisdiction. § 1441(a). District courts have
18 original jurisdiction over civil actions arising under federal law, see 28 U.S.C. § 1331, and
19 diversity jurisdiction under § 1332. Defendants, who bear the burden of showing that
20 removal was proper, see Abrego Abrego v. The Dow Chem. Co., 443 F.3d 676, 685 (9th Cir.
21 2006), assert that we have subject matter jurisdiction pursuant to both § 1331 and § 1332.

22 **A. Federal Question Jurisdiction**

23 Plaintiff argues that remand is necessary because state law claims predominate over
24 the mere "possibility of federal questions" raised in his complaint. (Motion to Remand at 7).
25 28 U.S.C. § 1331 grants federal district courts "original jurisdiction of all civil actions arising

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27 ¹ We note that at this time plaintiff has filed a second motion to amend his complaint
28 (doc. 39). Because plaintiff has exhausted his one amended complaint as a matter of right,
we will address that motion when it is ripe according to Rule 15(a)(2), Fed. R. Civ. P..

1 under the Constitution, laws, or treaties of the United States." Here, plaintiff's complaint
2 alleges violations of various federal statutes including RESPA, TILA, and the FCRA. That
3 more than raises a mere "possibility of federal questions." Accordingly, we have subject
4 matter jurisdiction over the federal claims pursuant to § 1331.

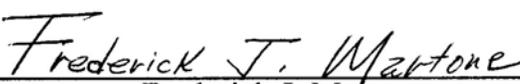
5 We also may exercise supplemental jurisdiction over plaintiff's state law claims of
6 fraud and a lack of standing to foreclose because they "are so related to claims in the action
7 . . . that they form part of the same case or controversy under Article III of the United States
8 Constitution." 28 U.S.C. § 1367. Plaintiff's claims under the various federal consumer-
9 lending statutes relate directly to the subject of this entire lawsuit, defendants' ability to
10 foreclose. Finally, we find no cause to remand the state law claims as a matter of discretion
11 under 28 U.S.C. § 1367(c), as the claims do not raise novel or complex issues of state law,
12 nor do they substantially predominate over federal claims. Accordingly, we have federal
13 question and supplemental jurisdiction over this case, and therefore need not address the
14 issue of diversity jurisdiction at this time.

15 In addition, we reject plaintiff's grounds for denying removal based on our inability
16 to exercise jurisdiction over the State of Arizona. The State of Arizona is not a defendant in
17 this action. Finally, we refuse to award sanctions or recommend bar discipline against the
18 Wells Fargo defendants' attorneys due to an improperly motivated request for removal.
19 Because removal was proper, there is no basis for sanctions.

20 Accordingly, **IT IS ORDERED GRANTING** plaintiff's motion for leave to file his
21 first amended complaint (doc. 17). Plaintiff has fourteen days to file and serve the amended
22 pleading on all parties under LRCiv. 15.1 and Rule 5, Fed. R. Civ. P..

23 **IT IS FURTHER ORDERED DENYING** plaintiff's motion to remand (doc. 11).

24 DATED this 18th day of October, 2010.

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 Frederick J. Martone
28 United States District Judge