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

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9 Steven E. Pauley, secured party creditor,

No. CV-12-01653-PHX-GMS

10 Plaintiff,

**ORDER**

11 v.

12 Federal National Mortgage Association, its  
13 successors and/or assigns; and Company  
Does (unknown),

14 Defendants.

15 Before the Court are Plaintiff Steven Pauley's Motion to Abstain and Remand to  
16 State Court (Doc. 13), Defendant Federal National Mortgage Association's ("Fannie  
17 Mae") Motion to Dismiss (Doc. 10), and Fannie Mae's Motion for Ruling (Doc. 19).  
18 Pauley's Motion is denied and Fannie Mae's motions are granted.

19 Pauley filed a Motion to Abstain and Remand to State Court on October 15, 2012,  
20 over two months after the case was removed. At that point, the only basis available for  
21 remand under 28 U.S.C. § 1447(c) was lack of subject matter jurisdiction.<sup>1</sup> Pauley's  
22 Motion contains no challenge to this court's diversity jurisdiction to hear this case. The  
23 Motion to Remand is therefore denied.

24 Pauley also asks this Court to abstain from hearing the case, citing the grounds  
25 developed in *Burford v. Sun Oil Co.*, *Younger v. Harris*, and *D.C. Court of Appeals v.*

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27 <sup>1</sup> "A motion to remand the case on the basis of any defect other than lack of  
28 subject matter jurisdiction must be made within 30 days after the filing of the notice of  
removal under section 1446(a). If at any time before final judgment it appears that the  
district court lacks subject matter jurisdiction, the case shall be remanded."

1 *Feldman*. An examination of the claims raised in the Complaint reveals that none of those  
2 doctrines apply. Pauley brings a case that attempts to undo a foreclosure sale, and asserts  
3 claims that have been decided numerous times by federal courts. *Buford* abstention  
4 applies only when outcome of federal case will prejudice public interest or state  
5 sovereignty, and Pauley does not establish such a threat. *See Buford*, 319 U.S. 315, 317-  
6 18 (1943). Moreover, neither *Younger* nor *Rooker-Feldman* abstention applies because  
7 both doctrines require the existence of a state court case, and Pauley has not produced  
8 evidence of such a case. *See Younger*, 401 U.S. 37, 43-55 (1971) (no interference in on-  
9 going state court proceedings); *Feldman*, 460 U.S. 462, 476-88 (1983) (no review of state  
10 court judgments). He points only to the non-judicial foreclosure that has already  
11 occurred, but such a proceeding is by its nature non-judicial and insufficient to require  
12 abstention. In any event, that proceeding is complete. (Doc. 16-1, Ex. A.) The Motion to  
13 Abstain is denied.

14 On September 10, 2012, Fannie Mae filed a Motion to Dismiss the case on  
15 numerous grounds, including for lack of service and failure to state a claim. The Court  
16 ordered Pauley to file a Response by October 31, 2012, and warned that failure to do so  
17 could result in dismissal. (Doc. 14.) Pauley did not file a Response, and Fannie Mae  
18 moved for a ruling on December 19, 2012. Local Rule 7.2(i) provides that “if . . . [a  
19 party] does not serve and file the required answering memoranda . . . , such non-  
20 compliance may be deemed a consent to the denial or granting of the motion and the  
21 Court may dispose of the motion summarily.” Pauley’s failure to respond may be deemed  
22 consent to the granting of Fannie Mae’s Motion. The Court must construe pleadings filed  
23 by unrepresented parties generously, but “pro se litigants are bound by the rules of  
24 procedure.” *Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995) (citing *King v. Atiyeh*, 814  
25 F.2d 565, 567 (9th Cir. 1987)). Nevertheless, the Court reviewed the Complaint and  
26 Fannie Mae’s Motion and determines that Pauley has failed to allege facts sufficient to  
27 support any of the claims that he raises. All of his claims are founded on the “show me  
28 the note” theory that has been rejected in this District for some time. In addition, Pauley’s

1 failure to comply with the Order of this Court to respond to Fannie Mae's Motion  
2 justifies dismissal of this case. *See* Fed. R. Civ. P. 41(b).

3 **IT IS THEREFORE ORDERED THAT:**

4 1. Defendant Fannie Mae's Motion to Dismiss (Doc. 10) is **GRANTED**.  
5 2. Plaintiff Pauley's Motion to Abstain and Remand to State Court (Doc. 13)  
6 is **DENIED**.

7 3. Defendant Fannie Mae's Motion for Ruling (Doc. 19) is **GRANTED**.  
8 Plaintiff's case is dismissed and the Clerk of Court is directed to terminate this action.  
9 Plaintiff shall take nothing.

10 Dated this 9th day of January, 2013.

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13 G. Murray Snow  
14 United States District Judge  
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