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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

BENJAMIN ALCAZAR, MERCEDEZ	)	Case No. CV 11-05645 DDP (MANx)
ALCAZAR,	)	
	)	
Plaintiffs,	)	
	)	<b>ORDER GRANTING DEFENDANTS' MOTION</b>
v.	)	<b>TO DISMISS IN PART AND REMANDING</b>
	)	<b>FOR LACK OF JURISDICTION</b>
BANK OF AMERICA, a National	)	
Banking Association;	)	
COUNTRYWIDE HOME LOANS INC.;	)	
EXECUTIVE MORTGAGE GROUP, a	)	[Dkt. No. 54]
California corporation;	)	
RECONSTRUCT COMPANY, a	)	
business entity form	)	
unknown; LANDSAFE TITLE	)	
CORPORATION,	)	
	)	
Defendants.	)	
	)	
_____	)	

Presently before the court is a Motion to Dismiss Plaintiffs' Complaint filed by Defendants' Bank of America, N.A., Countrywide Home Loans Inc., and ReconTrust Compant, N.A.<sup>1</sup> Having considered the submissions of the parties, the court grants the motion, adopts the following order, and dismisses the entire action.

<sup>1</sup> Though titled "Motion to Dismiss Plaintiffs' First Amended Complaint," Defendants' motion only seeks dismissal of three of Plaintiffs' four causes of action.

1 In August 2006, Plaintiffs obtained a refinancing loan on  
2 property located at 14628 Helwig Avenue, Norwalk, California 90650.  
3 (First Amended Complaint ("FAC") ¶¶ 4, 13.) The FAC alleges that  
4 Defendants Countrywide and Bank of America were not and are not  
5 holders of the security instrument associated with the loan. (FAC  
6 ¶ 15.) In August 2008, Plaintiffs loan payments fell into arrears,  
7 and Bank of America began foreclosure proceedings. (FAC ¶ 16.)

8 In 2009, Plaintiffs applied for a loan modification and  
9 received approval for a "trial plan" requiring payments of  
10 \$2,004.10. (FAC ¶ 17.) Soon after, Plaintiffs were approved for a  
11 second trial, with payments of \$ 1,688.58. (Id.) Plaintiffs made  
12 payments of \$1,688.15 until January 2010. (FAC ¶ 18.) At that  
13 point, Bank of America rejected the trial plan, stating that  
14 Plaintiffs had failed to make the required monthly payments of  
15 \$2,0004.10. (Id.)

16 On June 9, 2011, Plaintiffs filed a verified Complaint against  
17 Defendants in Los Angeles County Superior Court. (Notice of  
18 Removal, Ex. 1.) Defendants removed the case to federal court on  
19 July 8, 2011. A court in this district subsequently dismissed all  
20 but on of the causes of action alleged in the original complaint.  
21 (See Dkt. No. 16.) Plaintiffs then filed the FAC, which alleges  
22 four causes of action for 1) declaratory relief, 2) violation of  
23 the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. §  
24 2605, 3) violation of California Civil Code Section 2923.5, and 4)

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1 promissory estoppel.<sup>2</sup> Defendants now move to dismiss all but the  
2 promissory estoppel cause of action.

3 Plaintiffs, represented by counsel, filed a brief opposition  
4 to the instant motion. (Dkt. No. 56.) Plaintiffs' memorandum does  
5 not oppose Defendants' motion with respect to the RESPA claim or  
6 the declaratory relief claim. This court, therefore, interprets  
7 Defendants' failure to oppose as consent to the dismissal of those  
8 claims. See C.D. Cal. L.R. 7-12. Plaintiffs' first and second  
9 causes of action are therefore DISMISSED.

10 Defendants removed to this court on the basis of federal  
11 question jurisdiction under 28 U.S.C. § 1331. (Notice of Removal  
12 at 2.) A defendant may remove to federal court "any civil action  
13 brought in a State court of which the district courts of the United  
14 States have original jurisdiction . . . ." 28 U.S.C. § 1441(a).  
15 District courts have original jurisdiction over "all civil actions  
16 arising under the Constitution, laws, or treaties of the United  
17 States. 28 U.S.C. § 1331.

18 This court must independently examine the issue of subject  
19 matter jurisdiction, regardless of the parties' arguments. See  
20 United Investors Life Ins. Co. v. Waddell & Reed, Inc., 360 F.3d  
21 960, 966 (9th Cir. 2004). Having dismissed Plaintiffs' only  
22 federal cause of action, only state law claims for promissory  
23 estoppel and violation of California Civil Code Section 2923.5  
24 remain. The court must therefore determine whether to exercise its  
25 discretion to retain pendent jurisdiction over the remaining state

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27 <sup>2</sup> The FAC lists the RESPA, California Civil Code Section  
28 2923.5, and promissory estoppel claims as the third, fourth, and  
include a second cause of action.

1 law claims. Schneider v. TRW, Inc., 938 F.3d 986, 993-94 (9th  
2 Cir. 1991). In most instances, the balance of factors weigh  
3 against exercising jurisdiction over remaining state law claims.  
4 Id. at 993. Such is the case here. Accordingly, the court  
5 declines to exercise supplemental jurisdiction over Plaintiffs'  
6 promissory estoppel and violation of California Civil Code Section  
7 2923.5 claims, and remands this case to state court.

8 For the reasons stated above, Defendants' Motion to Dismiss is  
9 GRANTED, in part. Plaintiffs' declaratory relief and RESPA claims  
10 are DISMISSED. The remaining claims are hereby REMANDED.

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12 IT IS SO ORDERED.

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15 Dated: July 30, 2012

  
DEAN D. PREGERSON  
United States District Judge

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