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APR 18 2011

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EASTERN DISTRICT OF CALIFORNIA
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CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
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1 Charles Smith
2 Deborah M. Smith
3 2399 Megan Avenue
4 Clovis, CA 93611
5 Telephone (559) 681-2958

6 Plaintiffs
7 In Pro Persona

8 **UNITED STATES DISTRICT COURT**

9 **EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

10 CHARLES SMITH and
11 DEBORAH M. SMITH
12 Plaintiff,

13 vs.

14 BANK OF AMERICA, N.A
15 and
16 QUALITY LOAN SERVICE CORP. and
17 DOES 1-20,
18 Defendants,

) **Case No. 1:11-cv-00141-OWW-SMS**

) **Fresno Superior Court**

) **Case No. 10CECG04464**

) **[PROPOSED] ORDER GRANTING**
) **PLAINTIFFS MOTION TO REMAND**
) **COMPLAINT. PLAINTIFFS FEDERAL**
) **CLAIMS AGAINST DEFENDANTS BANK**
) **OF AMERICA, N.A and QUALITY**
) **LOAN SERVICE CORP. ARE**
) **DISMISSED WITHOUT PREJUDICE**

-SMS Smith et al v. Bank of America, NA et al

Doc. 16

19 Plaintiffs CHARLES SMITH and DEBORAH M. SMITH'S Motion to Remand the
20 case to Fresno County Superior Court. Doc. 6 and Defendants Bank of America,
21 N.A ("BOA") and Quality Loan Service Corp ("Quality") Opposition to Motion to
22 Plaintiffs Motion to Remand. Doc 12 came on regularly for hearing on March
23 28, 2011 at or about 10:00 a.m in Department Court Room 3 of the above-
24 entitled Court. Appearances by the parties are reflected in the Court's
25 records.

26 On December 27, 2010, Plaintiffs, proceeding in pro per, filed a
27 Complaint against Defendants BOA and Quality in the Superior Court of
28 California, County of Fresno. Doc. 1, Ex. A.

On January 25, 2011, Defendant BOA removed the case to this court under
28 U.S.C. § 1441(b). Doc. 1.

PROPOSED ORDER GRANTING PLAINTIFFS MOTION TO REMAND COMPLAINT. PLAINTIFFS

FEDERAL CLAIMS AGAINST DEFENDANTS ARE DISMISSED WITHOUT PREJUDICE-1]

1 Plaintiffs filed a motion to remand on January 31, 2011. Doc 6.
2 Defendant BOA opposes the motion. Doc 12. The motion was heard on March 28,
3 2011.

4 Here, there is federal question jurisdiction because the Complaint
5 asserts causes of action under federal laws: TILA, RESPA, FDCPA, 18 U.S.C. §
6 241, and 18 U.S.C. § 2071. 28 U.S.C. § 1331 ("The district courts shall have
7 original jurisdiction of all civil actions arising under the Constitution,
8 laws, or treaties of the United States.") There is supplemental jurisdiction
9 over Plaintiffs' state claims because they are so related to the federal
10 claims that they form part of the same case or controversy. 28 U.S.C. §
11 1367(a).

12 At the hearing, Plaintiffs stated that they would dismiss all their
13 federal claims against Defendants. If all the federal claims are dismissed,
14 the court will no longer have federal or supplemental jurisdiction, and
15 remand is proper.

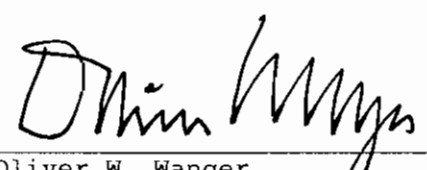
16 For the reasons stated in the April 6, 2011 MEMORANDUM DECISION AND
17 ORDER RE PLAINTIFF'S MOTION TO REMAND:

- 18 1. Plaintiffs' federal claims against Defendants are DISMISSED WITHOUT
19 PREJUDICE.
- 20 2. Plaintiffs' motion to remand is GRANTED.
- 21 3. Plaintiffs are submitting this Proposed Order Granting Plaintiffs
22 Motion to Remand and Plaintiffs federal claims against Defendants
23 are DISMISSED WITHOUT PREJUDICE consistent with this Courts
24 MEMORANDUM DECISION within five (5) days following electronic
25 service of the memorandum decision.

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IT IS ORDERED that the Motion to Remand is granted to Fresno County Superior Court, Case No. 10CECG04464.

Dated: 4-18-11



HON. Oliver W. Wanger
United States District Judge