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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ALEX NISPEROS,	)	Case No. 2:09-CV-00572 JAM-EFB
	)	
Plaintiff,	)	ORDER GRANTING MOTION TO
	)	REMAND
v.	)	
	)	
JPMORGAN BANK, N.A., a business	)	
entity, form unknown; CHASE HOME	)	
FINANCE, LLC, a business entity,	)	
form unknown; EZ LAND FUNDING	)	
INC., a business entity, form	)	
unknown; NDEX WEST LLC, a	)	
business entity, form unknown;	)	
and all persons unknown,	)	
claiming any legal or equitable	)	
right, title, estate, lien or	)	
interest in the property	)	
described in this complaint	)	
adverse to Plaintiff's title	)	
thereto, and DOES 1 through 25,	)	
inclusive,	)	
	)	
Defendants.	)	

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The matter before the Court is Alex Nisperos' ("Plaintiff's") Motion to Remand pursuant to 28 U.S.C. § 1447(c). Plaintiff brought this action in Solano County Superior Court on November 25, 2008 for injuries suffered as a result of an alleged pattern of unlawful, fraudulent or unfair real estate lending practices by

1 JPMorgan Chase Bank, N.A. ("JPMorgan"), Chase Home Finance LLC  
2 ("CHF")(collectively, "Chase"), EZ Land Funding Inc., and NDEX  
3 West, LLC. Chase removed this case from the Solano County Superior  
4 Court on February 27, 2009 pursuant to 28 U.S.C. § 1441(a). Docket  
5 # 1. Plaintiff filed an Amended Complaint on April 1, 2009. Docket  
6 # 7. Subsequently, Plaintiff filed a Motion to Remand on April 14,  
7 2009. Docket # 9. Chase filed an opposition to Plaintiff's Motion  
8 on May 29, 2009. Docket # 17. For the following reasons,  
9 Plaintiff's Motion to Remand is GRANTED.

#### 10 BACKGROUND

11 On March 22, 2007 Plaintiff secured a mortgage loan in  
12 connection with the property in dispute, 2967 Redwood Parkway,  
13 Vallejo, California 94591 ("Subject Property"), in the sum of  
14 \$365,600.00. JPMorgan served as the lender for the loan. Pls.'  
15 Amended Complaint, Docket # 7, ¶¶ 1-2. Plaintiff secured a second  
16 loan in connection with the Subject Property in the sum of  
17 \$91,400.00 on March 22, 2007. JPMorgan again served as the lender.  
18 Pls.' Amended Complaint, Docket # 7, ¶¶ 1-2.

19 A Notice of Default was recorded for the Subject Property on  
20 or around April 2008. Pls.' Amended Complaint, Docket # 7, ¶ 23.  
21 According to the Notice of Default, Plaintiff owed \$9,706.49 and  
22 was required to contact CHF to arrange for payment to stop  
23 foreclosure. Chase Motion to Dismiss Pls.' First Amended  
24 Complaint, Docket # 14, p. 3. On January 26, 2009, Plaintiff sent  
25 Chase a Notice to Cancel pursuant to California Civil Code  
26 § 1619.5, purporting to rescind the mortgage loans. Pls.' Amended  
27 Complaint, Docket # 7, ¶ 24. Plaintiff filed this action in the  
28 Superior Court of California that same day. Pls.' Motion to

1 Remand, Docket # 9, p. 5.

2 Plaintiff alleges that in executing the loans Chase 1) failed  
3 to provide proper disclosure notices as required by both state and  
4 federal law; 2) fraudulently misstated Plaintiff's income; 3)  
5 failed to properly verify Plaintiff's ability to repay the loan; 4)  
6 put Plaintiff in a loan he could not afford; and 5) failed and  
7 refused to provide required escrow final closing documents. Pls.'  
8 Amended Complaint, Docket # 7, ¶ 14. In addition, the loans were  
9 allegedly placed into a Pooling and Service Agreement ("PSA"),  
10 making the holders of the certificates in this PSA the only  
11 individuals who have standing to foreclose or collect on the loans.  
12 Pls.' Amended Complaint, Docket # 7, ¶ 26. Chase then filed a  
13 motion to remove the case to federal court, pursuant to 28 U.S.C.  
14 §§ 1441 et seq., which this Court granted. Notice of Removal,  
15 Docket # 1. Subsequent to removal, Plaintiff amended his original  
16 complaint such that the Amended Complaint exclusively relies upon  
17 California Law. Pls.' Amended Complaint, Docket # 7. The Amended  
18 Complaint was properly served on April 1, 2009. Pls.' Amended  
19 Complaint, Docket # 7.

#### 20 ANALYSIS

21 Where a plaintiff moves to remand a removed case for lack of  
22 subject matter jurisdiction, the district court must make a  
23 threshold determination of whether complete diversity between  
24 parties exists<sup>1</sup> or whether the complaint raises a federal question.<sup>2</sup>  
25 See Osborn v. Haley, 549 U.S. 225, 243 (2007). A federal court may

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26 <sup>1</sup> 28 U.S.C. § 1332.

27 <sup>2</sup> 28 U.S.C. § 1331.  
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1 remand an action to state court for lack of subject matter  
2 jurisdiction "any time before final judgment." 28 U.S.C. § 1447(c).  
3 When the federal character of a removed case is eliminated, the  
4 district court has discretion to retain jurisdiction, to remand, or  
5 to dismiss. See Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343,  
6 350-51 (1988) (holding that the federal district court has  
7 discretion to remand to state court when all federal-law claims  
8 have dropped out of an action and only state-law claims remain).

9 This action was properly removed to this Court pursuant to 28  
10 U.S.C. § 1441(b), which allows removal to federal district court  
11 for any claim or right arising under federal law. Plaintiff's  
12 Original Complaint alleged violations which arose from federal law,  
13 specifically violations of the Real Estate Settlement Procedures  
14 Act ("RESPA"), 26 U.S.C. §§ 2601, et seq., the Federal Truth in  
15 Lending Act ("TILA"), 15 U.S.C. §§ 1601-66j, and Regulation Z, 24  
16 C.F.R. §§ 3500.1-.17. Chase Notice of Removal, Docket #1, ¶ 4.  
17 These original allegations supported a finding of federal subject  
18 matter jurisdiction.

19 However, a plaintiff has the right to amend his complaint once  
20 at any time prior to defendants' filing of a responsive pleading.  
21 Fed. R. Civ. P. 15. Moreover, a plaintiff, as "master of the  
22 claim," may opt to avoid federal court jurisdiction by exclusive  
23 reliance on state law. Caterpillar Inc. v. Williams, 482 U.S. 386,  
24 392 (1987). Here, Plaintiff properly amended his complaint  
25 pursuant to FRCP 15 because the Amended Complaint was filed prior  
26 to the filing of a responsive pleading. Plaintiff's Amended  
27 Complaint removes all federal claims, including all references to  
28 RESPA, TILA and Regulation Z, and relies exclusively on California

1 law. See Pls.' Amended Complaint, Docket # 7.

2 While, in Sparta Surgical Corp. v. Nat'l Ass'n of Sec.  
3 Dealers, Inc., 159 F.3d 1209, 1213 (9th Cir. 1998), the Ninth  
4 Circuit held that remand cannot be compelled by amending a  
5 complaint so as to eliminate all federal claims, the decision to  
6 remand to state court is ultimately within this Court's discretion.  
7 See Harrell v. 20th Century Ins. Co., 934 F.2d 203, 205 (1991) ("It  
8 is generally within a district court's discretion either to retain  
9 jurisdiction to adjudicate the pendent state claims or to remand  
10 them to state court."); see also Carnegie-Mellon Univ., 484 U.S. at  
11 357 ("The discretion to remand enables district courts to deal with  
12 cases involving pendent claims in the manner that best serves the  
13 principles of economy, convenience, fairness, and comity . . . .")  
14 However, "[i]f the plaintiff has attempted to manipulate the forum,  
15 the court should take this behavior into account in determining  
16 whether the balance of factors to be considered under the pendent  
17 jurisdiction doctrine support a remand in the case." Id.

18 When the balance of the factors listed above, including  
19 economy, convenience, fairness, and comity, indicate that a case  
20 properly belongs in state court, "as when the federal-law claims  
21 have dropped out of the lawsuit in its early stages and only state-  
22 law claims remain, the federal court should decline the exercise of  
23 jurisdiction . . . ." Id. at 350. This action is in its initial  
24 stages and Plaintiff's Amended Complaint relies exclusively on  
25 California law. See Pls.' Amended Complaint, Docket # 7. To  
26 retain jurisdiction over purely state law claims here would be  
27 neither economical, convenient, nor respecting of comity. Given  
28 this understanding of the Amended Complaint, Chase's allegation of

1 forum manipulation does not convince this Court to deny Plaintiff's  
2 Motion to Remand.

3 ORDER

4 Because the balance of the factors of economy, convenience,  
5 fairness, and comity weigh in favor of remand, and pursuant to 28  
6 U.S.C. § 1447(c), the Court hereby remands this matter to the  
7 Solano County Superior Court.

8 Plaintiff's Motion to Remand is GRANTED.

9 Furthermore, as a result of the Plaintiff's Motion to Remand  
10 being granted, Defendant's Motion to Dismiss (Docket #14) will not  
11 be considered by this Court and will have to be re-filed as a  
12 demurrer in the Solano County Superior Court action should  
13 Defendant's decide to pursue dismissal at this stage of the  
14 litigation.

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16 IT IS SO ORDERED.

17 Dated: July 16, 2009

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19 JOHN A. MENDEZ,  
20 UNITED STATES DISTRICT JUDGE  
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