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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALAN LINGAD,)
)
Plaintiff,)
)
v.)
)
INDYMAC FEDERAL BANK; MORTGAGEIT,)
INC.; MORTGAGE ELECTRONIC)
REGISTRATION SYSTEMS, INC.; FRANK)
HOI CHEUNG WONG,)
)
Defendants.)
)

2:09-cv-02347-GEB-JFM
ORDER DECLINING TO EXERCISE
SUPPLEMENTAL JURISDICTION
OVER PLAINTIFF'S STATE LAW
CLAIMS

MortgageIT, Inc. ("MortgageIT") has filed a dismissal motion under Federal Rule of Civil Procedure 12(b)(6), in which it challenges the sufficiency of allegations in Plaintiff's first amended complaint, and a motion under Federal Rule of Civil Procedure 12(f) to strike certain portions of Plaintiff's first amended complaint. Plaintiff filed a "Statement of Non-Opposition" in which Plaintiff states in pertinent part:

Plaintiff's original Complaint in this matter contained a First Cause of Action under the Truth in Lending Act, 15 U.S.C. § 1604 ("TILA") and a Fourth Cause of Action under the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605 ("RESPA"). Plaintiff has subsequently filed his First Amended Complaint (Docket No. 42) which

1 removes these, and any other, federal causes of
2 action. Plaintiff hereby requests that all claims
3 against all Defendants herein be dismissed, without
4 prejudice, or, in the alternative, that Plaintiff
5 be granted leave to amend so as to clarify the
6 factual assertions regarding the roles, residence,
7 citizenship, and actions of the parties hereto, and
8 otherwise correct such deficiencies as are
9 addressed in the Defendants' pending Motions
10 regarding Plaintiffs' First Amended Complaint
11 (Docket No. 42), herein.

12 As the Court is aware, jurisdiction in this
13 matter was originally based upon "federal
14 questions" arising from Plaintiff's Causes of
15 Action under TILA and RESPA. No issue has been
16 raised herein regarding diversity of the parties,
17 and Plaintiff asserts that no basis for "diversity"
18 jurisdiction exists in this cause. Accordingly, if
19 the TILA and RESPA claims are dismissed, or removed
20 through amendment, there is no proper basis for
21 federal jurisdiction over the remaining state law
22 issues. Plaintiff therefore respectfully requests
23 that the Court dismiss all claims against all
24 Defendants herein, without prejudice, or, in the
25 alternative, grant the Plaintiff leave to amend his
26 Complaint as described above.

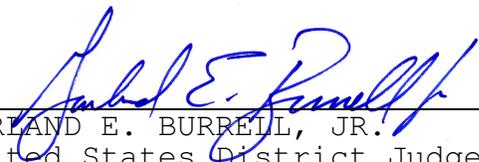
27 (Pl.'s Statement of Non-Opposition 1:24-2:5.)

28 Since Plaintiff's first amended complaint does not contain
a federal claim, the Court may decide, under 28 U.S.C. § 1367(c)(3),
whether to continue exercising supplemental jurisdiction over
Plaintiff's remaining state law claims. See Acri v. Varian Assocs.,
Inc., 114 F.3d 999, 1001 n.3 (9th Cir. 1997) (en banc) (suggesting
that district court may, but need not, sua sponte decide whether to
continue exercising supplemental jurisdiction under 28 U.S.C. §
1367(c)(3) once all federal law claims have been dismissed). Under 28
U.S.C. § 1367(c)(3), a district court "may decline to exercise
supplemental jurisdiction over a [state law] claim" if "the district
court has dismissed all claims over which it has original jurisdiction
. . . ." The decision to decline supplemental jurisdiction under 28
U.S.C. § 1367(c)(3) should be informed by the values of economy,

1 convenience, fairness and comity as delineated by the Supreme Court in
2 United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 726 (1996). Acri,
3 114 F.3d at 1001.

4 Since state courts have the primary responsibility for
5 developing and applying state law, the Gibbs values do not favor
6 retaining jurisdiction in this case. See Acri, 114 F.3d at 1001
7 (stating that "in the usual case in which all federal-law claims are
8 eliminated before trial, the balance of factors will point towards
9 declining to exercise jurisdiction over the remaining state-law
10 claims" (quotations and citation omitted)); Curiel v. Barclays Capital
11 Real Estate Inc., No. S-09-3074 FCD/KJM, 2010 WL 729499, at *1 (E.D.
12 Cal. Mar. 2, 2010) (stating "primary responsibility for developing and
13 applying state law rests with the state courts" and declining to
14 exercise supplemental jurisdiction after dismissal of the federal
15 claims); Anderson v. Countrywide Fin., No. 2:08-cv-01220-GEB-GGH, 2009
16 WL 3368444, at *5 (E.D. Cal. Oct. 19, 2009) (finding that "the Gibbs
17 values do not favor continued exercise of supplemental jurisdiction"
18 once all federal claims have been resolved). Therefore, the Court
19 declines to continue exercising supplemental jurisdiction over the
20 state law claims alleged in Plaintiff's first amended complaint and
21 they are dismissed without prejudice under 28 U.S.C. § 1367(c) (3).
22 Accordingly, this case shall be closed.

23 Dated: April 12, 2010

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GARLAND E. BURRELL, JR.
United States District Judge

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