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

KIAMARS AZIZKHAN, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
FIRST FRANKLIN LOAN SERVICING; )  
FIRST FRANKLIN FINANCIAL )  
CORPORATION; CAL-WESTERN )  
RECONVEYANCE CORPORATION; BANK OF )  
AMERICA, NATIONAL ASSOCIATION AS )  
SUCCESSOR BY MERGER TO LASALLE BANK )  
NATIONAL ASSOCIATION, AS TRUSTEE )  
FOR FIRST FRANKLIN MORTGAGE LOAN )  
TRUST, MORTGAGE LOAN ASSET BACKED )  
CERTIFICATES, SERIES 2007-FF2; )  
MORTGAGE ELECTRONIC REGISTRATION )  
SYSTEM, INC.; ANCHOR FINANCIAL )  
MORTGAGE COMPANY, INC.; RYAN N. )  
SMITH; and DOES 1-20 inclusive, )  
 )  
Defendants. )  
\_\_\_\_\_ )

2:09-cv-03071-GEB-EFB  
ORDER DISMISSING PLAINTIFF'S  
FEDERAL CLAIMS AND DECLINING  
SUPPLEMENTAL JURISDICTION  
OVER STATE LAW CLAIMS AND  
DENYING DEFENDANTS' MOTION  
FOR RULE 11 SANCTIONS\*

Defendants Home Loan Services, Inc d/b/a First Franklin Loan Servicing, First Franklin Financial Corporation, Bank of America, National Association, and Mortgage Electronic Registration Systems, Inc. ("Defendants") move to dismiss Plaintiff's first amended complaint under Federal Rule of Civil Procedure 12(b)(6). (Docket No. 14.) Defendants also filed a motion for sanctions under Federal Rule

\* This matter is deemed to be suitable for decision without oral argument. E.D. Cal. R. 230(g).

1 of Civil Procedure 11(c), seeking an award of \$11,405 in attorneys'  
2 fees. (Docket No. 16.) Plaintiff opposes Defendants' motion for  
3 sanctions and filed a Statement of Non-Opposition to Defendants'  
4 dismissal motion. (Docket Nos. 28, 30.)

5 **I. Dismissal of Plaintiff's Federal Claims**

6 Plaintiff's Statement of Non-Opposition states that he "does  
7 not oppose" Defendants' dismissal motion "insofar as it relates to  
8 [his] Eighth Cause of Action under the Real Estate Settlement  
9 Procedures Act, 12 U.S.C. §2605 ("RESPA") and [his] Ninth Cause of  
10 Action under the Truth in Lending Act, 15 U.S.C. §1604 ("TILA") . . .  
11 ." (Statement of Non-Opposition 2:2-10.) Further, "Plaintiff . . .  
12 requests that all claims against all Defendants . . . be dismissed,  
13 *without prejudice*, or in the alternative, that Plaintiff be granted  
14 leave to amend his First Amended Complaint in this matter so as to  
15 remove the Causes of Action under TILA and RESPA which had previously  
16 been plead [sic] by the Plaintiff . . . ." (Id. 2:11-14.) Plaintiff  
17 also argues that "[w]hen the federal claims that served as the basis  
18 for the Court's original jurisdiction are eliminated, either through  
19 dismissal . . . or by [amendment]," the court should "decline to  
20 assert supplemental jurisdiction over the remaining state law causes  
21 of action, and dismiss them without prejudice . . . ." (Id. 2:24-  
22 3:3.)

23 In accordance with Plaintiff's Statement of Non-Opposition,  
24 Plaintiff's TILA and RESPA claims are dismissed.

25 **II. Defendants' Rule 11 Motion**

26 Defendants argue they are entitled to an award of attorneys'  
27 fees because Plaintiff's counsel failed to comply with Rule 11(b)'s  
28 requirements. Specifically, Defendants contend Plaintiff's first

1 amended complaint was "filed for purposes of delay [and] to avoid the  
2 hearing of Defendants' Motion to Dismiss the original complaint."

3 (Mot. for Sanctions 5:8-10.) Defendants further argue that  
4 Plaintiff's first amended complaint "does not differ significantly  
5 from the original [c]omplaint" and does not "state a claim upon which  
6 relief can be granted . . . ." (Id. 5:9-12.) Plaintiff counters that  
7 "[w]hile Plaintiff's counsel admits that her pleadings in this matter  
8 have been, at times, somewhat 'inartfully' pled, these instances are  
9 certainly not tantamount to the bad faith and wilful disobedience to  
10 the Court's Orders as contemplated under the subject Rules and  
11 applicable authorities, so as to justify the imposition of the most  
12 extreme sanction in the form of attorneys fees payable to an opposing  
13 party." (Opp'n to Mot. for Sanctions 3:2-7.)

14 "Rule 11 authorizes a court to impose a sanction on any  
15 attorney, law firm, or party that brings a claim for an improper  
16 purpose or without support in law or evidence." Sneller v. City of  
17 Bainbridge Island, --- F.3d ----, 2010 WL 2076805, at \*2 (9th Cir. May  
18 25, 2010). Specifically, Rule 11(b) provides in pertinent part:

19 By presenting to the court a pleading . . . --  
20 whether by signing, filing, submitting, or later  
21 advocating it--an attorney . . . certifies that to  
22 the best of the person's knowledge, information,  
23 and belief, formed after inquiry reasonable under  
24 the circumstances:

25 (1) it is not being presented for any improper  
26 purpose, such as to harass, cause unnecessary  
27 delay, or needlessly increase the cost of  
28 litigation;

(2) the claims . . . and other legal  
contentions are warranted by existing law or  
by nonfrivolous argument for extending,  
modifying, or reversing existing law or for  
establishing new law;

(3) the factual contentions have evidentiary  
support or, if specifically so identified,  
will likely have evidentiary support after a

1 reasonable opportunity for further  
2 investigation or discovery . . . .

3 Fed. R. Civ. P. 11(b). As explained by the Ninth Circuit, under Rule  
4 11:

5 [a]n attorney has a duty prior to filing a complaint  
6 not only to conduct a reasonable factual  
7 investigation, but also to perform adequate legal  
8 research that confirms whether the theoretical  
9 underpinnings of the complaint are warranted by  
10 existing law or a good faith argument for an  
extension, modification or reversal of existing law.  
One of the fundamental purposes of Rule 11 is to  
reduce frivolous claims, defenses or motions and to  
deter costly meritless maneuvers, thereby avoiding  
delay and unnecessary expense in litigation.

11 Christian v. Mattel, Inc., 286 F.3d 1118, 1127 (9th Cir. 2002)  
12 (quotation and citations omitted).

13 Defendants argue Plaintiff's first amended complaint  
14 violates Rule 11(b) since:

15 It [was] evident[ly] filed for purposes of delay,  
16 to avoid the hearing of Defendants' Motion to  
17 Dismiss the original complaint. The First Amended  
18 Complaint does not differ significantly from the  
19 original [c]omplaint. It also fails to state a  
20 claim upon which relief can be granted against  
Defendants, for reasons set forth below. In  
general, none of these Defendants made the alleged  
misrepresentations which are subject of Plaintiff's  
complaint and each of Plaintiff's claims for relief  
is insufficient as a matter of law.

21 (Mot. for Sanctions 5:7-14.) Defendants then address each of  
22 Plaintiff's claims and assert, often without explanation or citation  
23 to any authority, that they fail to state a claim. (Id. 5-8.)

24 Defendants unsupported and conclusory arguments, however,  
25 are insufficient to demonstrate that Rule 11 sanctions should be  
26 awarded. Defendants' motion does not identify the subsection or  
27 subsections of Rule 11(b) that Defendants contend Plaintiff's first  
28

1 amended complaint violates; nor have Defendants supported their  
2 arguments and explained how the first amended complaint runs afoul of  
3 Rule 11(b). See Verigy US, Inc. v. Mayder, No. C-07-04330 RMW, 2008  
4 WL 4820755, at \*9 (N.D. Cal. Nov. 4, 2008) (stating that “[i]n  
5 assessing whether the filing of a particular paper was frivolous under  
6 Rule 11, the court should not consider the ultimate failure on the  
7 merits . . . but rather whether the position was legally unreasonable  
8 or without factual foundation”) (quotations and citation omitted).  
9 Further, Defendants cited no authority in their motion suggesting Rule  
10 11 sanctions are warranted when a complaint merely fails to state a  
11 claim. Defendants raise additional arguments in their reply brief in  
12 support of their position, but these arguments are disregarded since  
13 Defendants have not shown that these new arguments should be  
14 considered. See United States v. Romm, 455 F.3d 990, 997 (9th Cir.  
15 2006) (stating that “arguments not raised by a party in its opening  
16 brief are deemed waived”) (quoting Smith v. March, 194 F.3d 1045, 1052  
17 (9th Cir. 1999); Ass’n of Irrigated Residents v. C & R Vanderham  
18 Dairy, 435 F. Supp. 2d 1078, 1089 (E.D. Cal. 2006) (stating that “[i]t  
19 is inappropriate to consider arguments raised for the first time in a  
20 reply brief.”) Since Defendants have not demonstrated that  
21 Plaintiff’s first amended complaint violates Rule 11(b), their motion  
22 is denied.

### 23 **III. 28 U.S.C. § 1367(c) (3) Dismissal of Plaintiff’s State Law Claims**

24 Further, since no federal claims remain, the court may  
25 decide whether to continue exercising supplemental jurisdiction over  
26 Plaintiff’s state law claims. See Acri v. Varian Assocs., Inc., 114  
27 F.3d 999, 1001 n.3 (9th Cir. 1997) (en banc). Under 28 U.S.C. §  
28 1367(c) (3), a district court “may decline to exercise supplemental

1 jurisdiction over a [state law] claim" when "all claims over which it  
2 has original jurisdiction" have been dismissed. This decision should  
3 be informed by the values of economy, convenience, fairness and comity  
4 as delineated by the Supreme Court in United Mine Workers of Am. v.  
5 Gibbs, 383 U.S. 715, 726 (1996). Acri v. Varian Associates, Inc., 114  
6 F.3d 999, 1001 (9th Cir. 1997) (en banc).

7 Comity weighs in favor of declining supplemental  
8 jurisdiction since state courts have the primary responsibility for  
9 developing and applying state law. See Acri, 114 F.3d at 1001  
10 (stating that "in the usual case in which all federal-law claims are  
11 eliminated before trial, the balance of factors will point towards  
12 declining to exercise jurisdiction over the remaining state-law  
13 claims") (quotations and citation omitted); Gini v. Las Vegas Metro.  
14 Police Dep't, 40 F.3d 1041, 1046 (9th Cir. 1994) (stating that "[i]n  
15 the usual case in which federal-law claims are eliminated before  
16 trial, the balance of factors will point toward declining to exercise  
17 jurisdiction over the remaining state law claims") (quoting Schneider  
18 v. TRW, Inc., 938 F.2d 986, 993 (9th Cir. 1991)). Further, none of  
19 the other Gibbs factors favor retaining supplemental jurisdiction over  
20 Plaintiff's state law claims. Therefore, the court declines to  
21 exercise supplemental jurisdiction over Plaintiff's state law claims  
22 and those claims are dismissed without prejudice under 28 U.S.C. §  
23 1367(c) (3). This action shall be closed.

24 Dated: June 3, 2010

25  
26   
27 GARLAND E. BURRELL, JR.  
28 United States District Judge