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

DANIEL R. LOURIM,

Case No. 2:09-CV-3134-JAM-DAD

Plaintiff,

ORDER OF REMAND

v.

WASHINGTON MUTUAL, FA; GEORGE
SANDERS; MARK SHELTON and DOES
1-20 inclusive,

Defendants.

This matter comes before the Court on a joint Motion to Dismiss by Defendants JPMorgan Chase Bank, N.A. ("JPMorgan"), as an acquirer of certain assets and liabilities of Washington Mutual Bank who was named in the Complaint, George Sanders ("Sanders"), and Mark Shelton ("Shelton"). Defendants JPMorgan, Sanders and Shelton (collectively "Defendants") move to dismiss Plaintiff Daniel Lourim's ("Plaintiff's") Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a

1 claim upon which relief can be granted and Rule 12(e) for a more
2 definite statement. Defendants also filed a Request for Judicial
3 Notice in support of the Motion to Dismiss. Plaintiff did not
4 oppose the Motion to Dismiss, or file a statement of non-
5 opposition. The Motion was scheduled for a hearing on January
6 20, 2010. However the Court ordered the matter submitted without
7 appearance on January 14, 2010, pursuant to Local Rule 230(g).
8 On February 6, 2010, as the Court was preparing to issue its
9 order regarding the Motion to Dismiss, Plaintiff filed an
10 Amended Complaint thus rendering the Motion to Dismiss moot.
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13 Plaintiff's original Complaint alleged eight causes of
14 action arising from a loan transaction. It was removed from
15 Sacramento Superior Court by Defendants, on grounds of original
16 federal jurisdiction. The Complaint alleged one federal claim
17 for violation of the Real Estate Settlement Procedures Act
18 ("RESPA") 12 U.S.C. §2605 et seq., and seven state law claims.
19 The Amended Complaint now names one additional defendant and no
20 longer brings the federal RESPA claim.
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23

24 Remand

25 Under 28 U.S.C. §1441, a defendant may remove an action
26 filed in state court to federal court, if the federal court
27 would have original subject matter jurisdiction over the action.
28 Meza v. Matrix Servicing, 2010 WL 366623 at *2 (E.D. Cal. Jan.

1 26, 2010). Federal courts have original subject matter
2 jurisdiction over all civil actions arising under the
3 Constitution, laws or treaties of the United States. Id.
4 Pursuant to 28 U.S.C. §1367, in any civil action in which the
5 district court has original jurisdiction, the district court
6 also has supplemental jurisdiction over all other claims in the
7 action which form part of the same Article III case or
8 controversy. Wheeler v. Payless Towing, 2010 WL 148714 at *3
9 (E.D. Cal. Jan. 11, 2010). However, when removal is based on
10 federal question jurisdiction, and all federal claims are
11 dropped from the proceedings, "it is generally within a district
12 court's discretion either to retain jurisdiction to adjudicate
13 the pendent state claims or to remand them to state court." Meza
14 at *2 (quoting Harrell v. 20th Century Ins. Co., 934 F.2d 203,
15 205 (9th Cir. 1991). A district court may consider *sua sponte*
16 whether to remand pendent state claims to state court. Acri v.
17 Varian Associates, Inc., 114 F.3d 999, 1000-01 (9th Cir. 1997).

21 "The Supreme Court has stated, and [the Ninth Circuit]
22 ha[s] often repeated, that in the usual case in which all
23 federal-law claims are eliminated before trial, the balance of
24 factors will point toward declining to exercise jurisdiction
25 over the remaining state law claims." Id. at 1001. Here,
26 Plaintiff's Amended Complaint no longer contains any federal
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1 claims. Accordingly, the Court declines to exercise jurisdiction
2 over the remaining state-law claims.
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5 Sanctions

6 Local Rule 230(c) requires a party responding to a motion
7 to file either an opposition to the motion or a statement of
8 non-opposition, no less than fourteen (14) days preceding the
9 noticed hearing date. Here, counsel for Plaintiff did not timely
10 file any response, either an opposition or a statement of non-
11 opposition, to Defendants' Motion to Dismiss. Instead, Counsel
12 waited for approximately one month after the opposition or
13 statement of non-opposition was due to then file the Amended
14 Complaint. Counsel has failed to timely file oppositions or
15 statements of non-opposition in both this case and another case
16 pending before this Court. This failure to comply with the Local
17 Rules created substantial unnecessary work for the Court.
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20 Local Rule 110 authorizes the Court to impose sanctions for
21 "failure of counsel or of a party to comply with these Rules."
22 Therefore, the Court will sanction Plaintiff's counsel, Jeffrey
23 D. Tocherterman, \$250.00 payable to the Clerk of the Court
24 within ten (10) days from the date of this Order, unless he
25 shows good cause for his failure to comply with the Local Rules.
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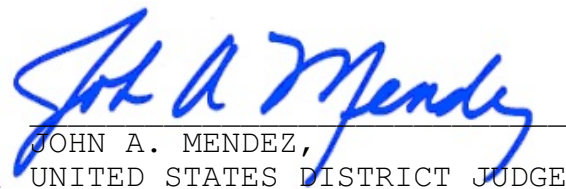
ORDER

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2 It is hereby ordered that this action is REMANDED to the
3 Superior Court of the State of California for the County of
4 Sacramento. The District Court retains jurisdiction over this
5 matter only for the purpose of imposing sanctions on Plaintiff's
6 counsel.
7

8 It is further ordered that within ten (10) days of this
9 Order Jeffrey D. Tochterman shall either (1) pay sanctions of
10 \$250.00 to the Clerk of the Court, or (2) submit a statement of
11 good cause explaining his failure to comply with Local Rule
12 230(c).
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15 IT IS SO ORDERED.
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17 Dated: February 10, 2010
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JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE