

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

-----oo0oo-----

RICHARD FISCHER,
Plaint

NO. CIV. S-10-454 FCD GGH

v.

MEMORANDUM AND ORDER

BANK OF AMERICA; GREEN
TREE SERVICING; FIRST NATIONAL
BANK OF ARIZONA, et al.,

Defendants.

-----oo0oo-----

This matter is before the court on the motion of Bank of America, N.A. and Mortgage Electronic Registration System, Inc.¹ to dismiss and/or strike plaintiff Richard Fischer's ("plaintiff") complaint² pursuant to Federal Rules of

1 No other named defendant has appeared in the action.

² On the basis of federal question jurisdiction, Bank of America, N.A. removed the case to this court on February 22, 2010.

1 Civil Procedure 12(b)(6) and 12(f).³ (Docket #6.) On April 23,
2 2010, plaintiff filed a statement of non-opposition to
3 defendants' motion, in which he requested dismissal of his
4 federal claims for relief, pursuant to the Real Estate Settlement
5 Procedures Act ("RESPA") and the Truth in Lending Act ("TILA"),
6 alleged against the moving defendants as well as all other
7 defendants. (Docket #7.)

8 Based on plaintiff's statement, the court dismisses the
9 RESPA and TILA claims asserted in the complaint. See, e.g. Fed.
10 R. Civ. P. 41(a); Swedberg v. Marotzke, 339 F.3d 1139 (9th Cir.
11 2003) (a defendant's filing of a motion to dismiss, pursuant to
12 Rule 12(b), does not prevent the plaintiff from later filing a
13 voluntary dismissal).

14 Dismissal of the RESPA and TILA claims leaves the complaint
15 devoid of any federal claims. The remaining claims are state law
16 claims for fraud, breach of contract, breach of the implied
17 covenant of good faith and fair dealing, violation of the
18 California Rosenthal Act, negligence, breach of fiduciary duty,
19 violation of California Business and Professions Code § 17200 et
20 seq., and wrongful foreclosure. (Complaint, filed January 5,
21 2010, in Sacramento Superior Court [Docket #1].)

22 Subject to the conditions set forth in 28 U.S.C. § 1367(c),
23 district courts may decline to exercise supplemental jurisdiction
24 over state law claims. See Acri v. Varian Assoc., Inc., 114 F.3d
25 999, 1000 (9th Cir. 1997) (en banc). The court's decision
26

27 ³ Because oral argument will not be of material
28 assistance, the court orders this matter submitted on the briefs.
E.D. Cal. L.R. 230(g).

1 whether to exercise supplemental jurisdiction should be informed
2 by values of "economy, convenience, fairness, and comity." Id.
3 at 1001 (citations omitted). Further, primary responsibility for
4 developing and applying state law rests with the state courts.
5 Therefore, when federal claims are eliminated before trial,
6 district courts should usually decline to exercise supplemental
7 jurisdiction. See Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343,
8 350 (1988); Gini v. Las Vegas Metropolitan Police Dept., 40 F.3d
9 1041, 1046 (9th Cir. 1994) ("In the usual case in which federal-
10 law claims are eliminated before trial, the balance of factors
11 . . . will point toward declining to exercise jurisdiction over
12 the remaining state law claims.") (quoting Schneider v. TRW Inc.,
13 938 F.2d 986, 993 (9th Cir. 1991)). In accordance with Section
14 1367(c), the court declines to exercise supplemental jurisdiction
15 over plaintiff's remaining state law claims.

16 Plaintiff's complaint is therefore DISMISSED without
17 prejudice, and the case is HEREBY REMANDED to the Sacramento
18 Superior Court.⁴

19 IT IS SO ORDERED.

20 DATED: April 28, 2010



21
22 FRANK C. DAMRELL, JR.
23 UNITED STATES DISTRICT JUDGE
24
25
26

27 ⁴ Plaintiff's motion for leave to file an amended
28 complaint to dismiss his federal claims for relief, noticed for
hearing on May 7, 2010, is HEREBY DENIED as MOOT.