

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

LORRI HARMON,

No. 2:12-cv-2996-LKK-CMK

Plaintiff,

vs.

FINDING S AND RECOMMENDATIONS

FEDERAL HOME LOAN MORTGAGE  
CORPORATION,

Defendants.

\_\_\_\_\_/

Plaintiff, proceeding pro se, brings this civil action. Pending before the court is plaintiff's complaint (Doc. 1) and two motions for injunctive relief (Docs. 5, 7).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court is also required to screen complaints brought by litigants who have been granted leave to proceed in forma pauperis. See 28 U.S.C. § 1915(e)(2). Under these screening provisions, the court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. §§ 1915(e)(2)(A), (B) and 1915A(b)(1), (2). Moreover, pursuant to Federal Rule of Civil Procedure 12(h)(3), this court

1 must dismiss an action if the court determined that it lacks subject matter jurisdiction. Because  
2 plaintiff, who is not a prisoner, has been granted leave to proceed in forma pauperis, the court  
3 will screen the complaint pursuant to § 1915(e)(2). Pursuant to Rule 12(h), the court will also  
4 consider as a threshold matter whether it has subject-matter jurisdiction.

#### 5 **I. PLAINTIFF’S COMPLAINT**

6 Plaintiff brings this action to quiet title, for breach of contract, and injunctive  
7 relief based on defendant’s alleged violation of the Helping Families Save Their Homes Act of  
8 2009, Pub. L. No. 111-22, §§ 701-704, 123 Stat. 1632 (2009) (“Act”). Plaintiff alleges that she  
9 had a valid rental agreement and option to purchase the home she resides in, dating back to 2008.  
10 The home and property at issue are located in the City of Magalia, County of Butte. Plaintiff  
11 states she received a notice of foreclosure sale of the property in 2009. She further alleges that  
12 she made proper payments to the former owners of the property pursuant to the terms of the  
13 lease, which were to be applied to the Sales Contract. After receiving the Notice of Default,  
14 plaintiff states she attempted to contact the mortgage holder, Wells Fargo Home Mortgage, who  
15 would not communicate with her until after the Trustee sale. After the Trustee sale, plaintiff  
16 states she provided a copy of the lease agreement to Wells Fargo. A few days thereafter, she  
17 states she received posted notice that defendant was now the owner of the property and informed  
18 her that if she was a bona fide tenant she was to provide a copy of her lease agreement pursuant  
19 to the Helping Family Save Their Homes Act of 2009. She then alleges the defendant violated  
20 Title VII of the Act by filing an unlawful detainer action against her in 2009. She also alleges the  
21 unlawful detainer action was dismissed with prejudice in the State court.

22 In addition, plaintiff claims the defendant has failed to properly maintain the  
23 property as directed by the Comptroller of the Currency Administrator of National Banks. She  
24 further claims that she has attempted to exercise her purchase option, but did not receive a  
25 response. In 2012, plaintiff states she was served with another unlawful detainer action. It is this  
26 second unlawful detainer action plaintiff is seeking injunctive relief from this court to stop.

1 Plaintiff states her first attempt to stop those proceedings was by removing the unlawful detainer  
2 action to the court, in case number 2:12-cv-1637-GEB-CMK. That action was remanded to the  
3 State court for lack of jurisdiction. Plaintiff filed this action thereafter.

## 4 5 **II. DISCUSSION**

6 In order for this case to proceed, this court must have subject-matter jurisdiction.  
7 Federal courts are courts of limited jurisdiction. This court only has jurisdiction to adjudicate  
8 those cases which involve either diversity of citizenship (citizens of different states) or a federal  
9 question (such as a constitutional claim). See Kokkonen v. Guardian Life Ins. Co. of Am., 511  
10 U.S. 375, 380-81 (1994); 28 U.S.C. § 1330 *et seq.* The burden of establishing federal  
11 jurisdiction lies on the party asserting such jurisdiction. See Kokkonen, 511 U.S. at 377; see also  
12 Miguel v. Country Funding Corp., 309 F.3d 1161, 1164 (9th Cir. 2004).

13 Here, plaintiff claims she is proceeding on a federal question pursuant to 28  
14 U.S.C. § 1330, claiming a violation of the Act and citing to 28 U.S.C. § 1402(d) to quite title on  
15 the property. General federal question jurisdiction under 28 U.S.C. § 1331 exists only “when the  
16 plaintiff sues under a federal statute that creates a right of action in federal court.” Williams v.  
17 United Airlines, Inc., 500 F.3d 1019, 1022 (9th Cir. 2007). “[A] complaint alleging a violation  
18 of a federal statute as an element of a state cause of action, when Congress has determine that  
19 there should be no private, federal cause of action for the violation, does not state a claim ‘arising  
20 under the Constitution, laws, or treaties of the United States.’” Merrell Dow Pharms. Inc. v.  
21 Thompson, 478 U.S. 804, 817 (1986) (quoting 28 U.S.C. § 1331). In order for a violation of a  
22 federal statute to give rise to a private cause of action, the statute must create such a right, either  
23 explicitly or implicitly. See Diaz v. Davis (In re Diqimarc Corp. Derivative Litiq.), 549 F.2d  
24 1223, 1229-30 (9th Cir. 2008).

25 ///

26 ///

1           28 U.S.C. § 1402 is inapplicable here, and cannot provide jurisdiction for this  
2 case. Section 1402 is only applicable where the United States is a party to the action. Here, the  
3 United States is not a party, so § 1402 is not applicable.

4           Second, plaintiff is claiming the defendant has violated the Act by filing an  
5 unlawful detainer action against her in State court. The applicable section of the Act is § 702,  
6 which provides, in part:

7           (a) IN GENERAL. - - In the case of any foreclosure on a federally-related  
8 mortgage loan or on any dwelling or residential real property after the date  
9 of enactment of this title, any immediate successor in interest in such  
10 property pursuant to the foreclosure shall assume such interest subject to -

11           (1) the provision, by such successor in interest of a notice to vacate  
12 to any bona fide tenant at least 90 days before the effective date of  
13 such notice; and

14           (2) the rights of any bona fide tenant, as of the date of such notice  
15 of foreclosure - -

16           (A) under any bona fide lease entered into before the notice  
17 of foreclosure to occupy the premises until the end of the  
18 remaining term of the lease, except that a successor in  
19 interest may terminate a lease effective on the date of sale  
20 of the unit to a purchaser who will occupy the unit as a  
21 primary residence, subject to the receipt by the tenant of the  
22 90 day notice under paragraph (1); or

23           (B) without a lease or with a lease terminable at will under  
24 state law, subject to the receipt by the tenant of the 90 day  
25 notice under subsection (10,

26           except that noting under this section shall affect the requirements  
of termination of any federal- or State-subsidized tenancy or of any  
State or local law that provides longer time periods or other  
additional protections for tenants.

27           Other courts have addressed the issue of whether § 702 of the Act creates a private  
28 right of action proving federal court jurisdiction. Those cases have found no such right is  
29 created, nor was intended to be created. In Logan v. U.S. Bank Nat. Ass'n, 2010 WL 1444878  
30 (C.D. Cal. 2010), the first court to address the issue, determined there was no private right of  
31 action either explicitly or implied in the Act. See id. at \*10. Thus, the court concluded that it

32 ///

33 ///

1 lacked subject matter jurisdiction to hear the plaintiff's damages claims.<sup>1</sup> Similar findings have  
2 been made in the Northern District and Eastern District of California. See e.g., Lopez v. DAPC  
3 LLC, 2012 WL 2237227 (N.D. Cal. 2012), Gullatt v. Aurora Loan Services, LLC, 2010 WL  
4 4070379 (E.D. Cal. 2010). The undersigned agrees with the reasoning set forth in those cases,  
5 that § 702 provides neither an explicit nor implicit private right of action.

6 As there is no private right of action for violations of § 702, this court lacks  
7 subject matter jurisdiction to hear plaintiff's claims based on those violations.

### 8 9 **III. MOTION FOR INJUNCTION**

10 Plaintiff has filed two motions for injunction (Docs. 5, 7). In both of her motions,  
11 she realleges the facts as stated in her complaint, including that she entered into a lease  
12 agreement with the prior owners of the house, kept her payments current, she has tried to exercise  
13 her option to buy, and the defendant foreclosed on the property. In addition, she realleges that  
14 she was served with a second Unlawful Detainer action in 2012, even though the defendant had  
15 not communicated with her or responded to her inquiries. Plaintiff does not specify what relief  
16 she is requesting in her motion, but does state she is looking to "avoid the Defendants' wrongful  
17 eviction proceedings ...." In addition, in her prayer for relief in her complaint, plaintiff requests  
18 an injunction "enjoining Defendants . . . [f]rom conducting or continuing, any further  
19 proceedings in the Unlawful Detainer action . . . ." (Compl., Doc. 1, at 20-21).

20 As mentioned, other courts have addressed this issue in cases similar to the  
21 present one. The Central District analyzed a request for injunctive relief in Logan, and  
22 determined that the court must abstain from exercising jurisdiction over such a case that seeks to  
23 enjoin an unlawful detainer action under Younger v. Harris, 401 U.S. 37, 40-41 (1971). See

---

24  
25 <sup>1</sup> The court also addressed the plaintiff's claim for injunctive relief, and found the  
26 Younger doctrine applicable, requiring the court abstain from exercising jurisdiction as it would  
interfere with state judicial proceedings, namely the unlawful detainer action. See Younger v.  
Harris, 401 U.S. 37, 40-41 (1971). The same analysis is applicable here, as discussed *infra*.

1 Logan v. U.S. Bank Nat. Ass'n, 2010 WL 1444878, at \*2 (C.D. Cal. 2010). As the court  
2 discussed, federal courts must abstain from exercising jurisdiction under Younger where four  
3 requirements are met, namely an ongoing state-initiated proceeding, which implicates important  
4 state interests, in which the plaintiff is not barred from litigating the federal issue, and the federal  
5 court action would interfere with the state proceeding. See San Jose Silicon Valley Chamber of  
6 Commerce Political Action Comm v. City of San Jose, 546 F.3d 1087, 1092 (9th Cir. 2008).

7 Here, the unlawful detainer action plaintiff seeks to avoid was filed in February  
8 2012. While plaintiff does not specifically state whether the unlawful detainer action is still  
9 ongoing, the fact that she is asking to avoid a wrongful eviction and any further proceedings in  
10 that action lead to the conclusion that the state action is still proceeding. Other courts have  
11 determined that an unlawful detainer action involves sufficient state interest to warrant Younger  
12 abstention, and the undersigned agrees with that reasoning. See e.g., Hicks v. Superior Court of  
13 California, County of Kern, 2008 WL 638544, \*5 (E.D. Cal. 2008). The undersigned does not  
14 see any reason plaintiff could not have raised these issues in the State court proceedings. Finally,  
15 granting plaintiff the relief sought, to avoid a wrongful eviction and stop any further proceedings,  
16 would have at least the practical effect of interfering with the State court's ability to adjudicate  
17 the underlying unlawful detainer action. Thus, all four Younger requirements are satisfied.

18 Because the Younger requirements are satisfied, the court to required to dismiss  
19 plaintiff's claims for injunctive relief. Thus, her motions for a temporary restraining order must  
20 also be denied.

#### 21 22 **IV. CONCLUSION**

23 Because there is no private right of action provided for in the Act, and Younger  
24 prohibits the court from granting injunctive relief, this court lacks jurisdiction over this entire  
25 action.

26 ///

1           It does not appear possible that the deficiencies identified herein can be cured by  
2 amending the complaint, so plaintiff is not entitled to leave to amend prior to dismissal of the  
3 entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).

4           Based on the foregoing, the undersigned recommends that this action be dismissed  
5 for lack of jurisdiction, and the motions for injunctive relief be denied.

6           These findings and recommendations are submitted to the United States District  
7 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
8 after being served with these findings and recommendations, any party may file written  
9 objections with the court. Responses to objections shall be filed within 14 days after service of  
10 objections. Failure to file objections within the specified time may waive the right to appeal.  
11 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

12  
13 DATED: May 9, 2013

14   
15 **CRAIG M. KELLISON**  
16 UNITED STATES MAGISTRATE JUDGE  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26