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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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10 TIM KENWORTHY, Executor of
11 the Estate of Donald
Kenworthy,

12 Plaintiff,

13 v.

14 OLD REPUBLIC TITLE & ESCROW,
15 et al.,

16 Defendants.

No. 2:17-cv-00856-JAM-AC

**ORDER GRANTING PLAINTIFF'S
MOTION TO DISMISS**

17 This matter is before the Court on Plaintiff Tim Kenworthy's
18 Motion to Dismiss. Mot., ECF No. 78. Defendant Nationstar
19 Mortgage filed a Statement of Non-Opposition, ECF No. 81, and
20 Defendants Violet Blakeney and Elisabeth Sittner have not filed
21 oppositions to Plaintiff's motion. After consideration of the
22 parties' briefing on the motion and relevant legal authority, the
23 Court will grant Plaintiff's Motion to Dismiss and dismiss
24 Defendant Sittner's state law counterclaim without prejudice,
25 closing this case.¹

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27 ¹ This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled
for November 7, 2017.

1 I. BACKGROUND

2 On April 24, 2017, Plaintiff, proceeding pro se, filed suit
3 alleging violations of the Racketeer Influenced and Corrupt
4 Organizations Act (RICO), 18 U.S.C. § 1961, et seq., and nine
5 other state and common law claims. Compl., ECF No. 1. Plaintiff
6 alleged that twelve named defendants and other unnamed defendants
7 engaged in financial elder abuse, pressuring his deceased father
8 into purchasing a home in Maui, Hawaii. Id. at ¶¶ 19-63.

9 Defendants Old Republic Title & Escrow, Deni Kawauchi,
10 Homestreet Bank, Academy Mortgage, Kara Beltran, American Green
11 Realty, Coldwell Banker Island Properties, and Melanie Vitale
12 moved to dismiss. Mots. Dismiss, ECF Nos. 18, 23, 29, 30, 40.
13 Defendant Faith Armanini filed a joinder to the motions.
14 Joinder, ECF No. 54. Defendant Sittner filed a counterclaim
15 against Plaintiff for \$28,000, which she alleges is owed for
16 renovations performed at the Maui home. Answer, ECF No. 22,
17 pp. 5-7.

18 After Plaintiff retained counsel, pursuant to the magistrate
19 judge's order, the case was reassigned to this Court. Mins., ECF
20 No. 63; Min. Order, ECF No. 71. Plaintiff then voluntarily
21 dismissed Defendants Old Republic Title & Escrow, Deni Kawauchi,
22 Homestreet Bank, Academy Mortgage, Kara Beltran, American Green
23 Realty, Coldwell Banker Island Properties, Melanie Vitale, and
24 Faith Armanini without prejudice. Vol. Dismiss, ECF No. 77.
25 Plaintiff now moves to dismiss the remaining defendants without
26 prejudice and dismiss Defendant's Sittner's counterclaim. Mot.,
27 pp. 4-6.

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1 II. OPINION

2 A. Legal Standard

3 1. Voluntary Dismissal After An Answer

4 Federal Rule of Civil Procedure 41(a) governs the voluntary
5 dismissal of an action in federal court. Rule 41(a) provides
6 that "an action may be dismissed at the plaintiff's request only
7 by court order, on terms that the court considers proper," unless
8 a plaintiff files a notice of dismissal before the opposing party
9 serves either an answer or a motion for summary judgment, or the
10 parties stipulate to the dismissal. Fed. R. Civ. P. 41(a)(1-2).
11 Whether to grant a Rule 41(a)(2) motion lies within the district
12 court's discretion. Sams v. Beech Aircraft Corp., 625 F.2d 273,
13 277 (9th Cir. 1980). A Rule 41(a)(2) motion should be granted
14 unless a defendant can show it will suffer "some plain legal
15 prejudice" as a result of dismissal. Smith v. Lenches, 263 F.3d
16 972, 975 (9th Cir. 2001).

17 2. Exercise of Supplemental Jurisdiction

18 Under 28 U.S.C. § 1367, a federal court may retain
19 supplemental jurisdiction over claims over which no original
20 jurisdiction exists. Section 1367(a) grants supplemental
21 jurisdiction over all claims "that are so related to claims in
22 the action within such original jurisdiction that they form part
23 of the same case or controversy under Article III of the United
24 States Constitution." This section applies to state law claims
25 brought by a plaintiff and counterclaims brought by a defendant.
26 Sparrow v. Mazda Am. Credit, 385 F. Supp. 2d 1063, 1066 (E.D.
27 Cal. 2005).

28 Section 1367(c) lists reasons that a district court may

1 decline to exercise supplemental jurisdiction, including:

- 2 (1) the claim raises a novel or complex issue of
3 State law,
4 (2) the claim substantially predominates over the
5 claim or claims over which the district court has
6 original jurisdiction,
7 (3) the district court has dismissed all claims over
8 which it has original jurisdiction, or
9 (4) in exceptional circumstances, there are other
10 compelling reasons for declining jurisdiction.

11 28 U.S.C. § 1367(c). “[I]n the usual case in which all federal-
12 law claims are eliminated before trial, the balance of factors
13 . . . will point toward declining to exercise jurisdiction over
14 the remaining state-law claims.” Acri v. Varian Assocs., Inc.,
15 114 F.3d 999, 1001 (9th Cir.), supplemented, 121 F.3d 714 (9th
16 Cir. 1997), as amended (Oct. 1, 1997) (quoting Carnegie-Mellon
17 Univ. v. Cohill, 484 U.S. 343, 350 n.7 (1988)).

18 B. Analysis

19 1. Plaintiff’s Claims

20 In this case, Plaintiff moves to dismiss his claims against
21 the three remaining defendants without prejudice. Mot. at 6.
22 Defendant Nationstar Mortgage has submitted that it does not
23 oppose Plaintiff’s motion and Defendants Blakeley and Sittner
24 have not filed oppositions to the motion. The Court thus finds
25 that Defendants have not shown that they will suffer any
26 prejudice as a result of dismissal, and grants Plaintiff’s motion
27 to dismiss.

28 2. Defendant Sittner’s Counterclaim

After dismissing Plaintiff’s claims, only Defendant

1 Sittner's counterclaim remains. Here, considering the factors
2 enumerated in 28 U.S.C. § 1367(c), as well as the values of
3 "economy, convenience, fairness, and comity," the Court declines
4 jurisdiction over Sittner's state law counterclaim. See Acri,
5 114 F.3d at 1001. The Court has dismissed all claims over which
6 it had original jurisdiction, so Sittner's claim is more
7 appropriately addressed in state court. 28 U.S.C. § 1367(c)(3).
8

9 III. ORDER

10 For the reasons set forth above, the Court GRANTS the
11 Plaintiff's Motion to Dismiss without prejudice. The Court
12 further declines to exercise supplemental jurisdiction over
13 Defendant Sittner's counterclaim, and DISMISSES the counterclaim
14 without prejudice. Because the Court has dismissed all claims
15 within this case, the Court directs the Clerk of Court to close
16 the case.

17 IT IS SO ORDERED.

18 Dated: October 31, 2017

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21 JOHN A. MENDEZ,
22 UNITED STATES DISTRICT JUDGE
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