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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JUNG HYUN CHO; KYU HWANG CHO;
EUN SOOK CHO; and EUI HYUN CHO,

Plaintiff,

v.

SELECT PORTFOLIO SERVICING,
INC.; DEUTSCHE BANK NATIONAL
TRUST COMPANY as a subsidiary of
Deutsche Bank Americas Holding Corp.;
BANK OF AMERICA; WMC
MORTGAGE LLC formerly known as
WMC Mortgage Corporation; THE WOLF
FIRM; RONALD LEE; and SOLANO
COUNTY TAX ASSESSOR,

Defendant.

No. 2:17-cv-01073-KJM-CKD

ORDER

Each of the parties that have appeared in the above-captioned case has filed a “Consent to Proceed Before a United States Magistrate Judge.” *See* 28 U.S.C. §636(a)(5) and (c); *see also* ECF Nos. 7–10 (consent of plaintiffs), 15 (consent of defendant The Wolf Firm), 18 (defendant Solano Tax Assessor), 20 (defendant Bank of America), 46 (defendant WMC Mortgage LLC), 64 (defendants Select Portfolio Servicing and Deutsche Bank National Trust Company). As of the date of this order, defendant Ronald Lee has been served but has not appeared in this case. *See* ECF No. 13.

1 The law is not clear whether referral may be appropriate where, as here, all parties that
2 have appeared -- but not all named parties -- have consented to the magistrate judge's jurisdiction.
3 *See Coleman v. Lab. and Indus. Rev. Commn. of Wisconsin*, 860 F.3d 461, 466 (7th Cir. 2017)
4 (noting split between Fifth, Seventh and Eighth Circuits); *see also* 28 U.S.C. § 636(c)(1)
5 (permitting referral "[u]pon the consent of the parties"). A recent appellate decision suggests
6 referral may be appropriate so long as at least one plaintiff and one defendant provide consent.
7 *Coleman*, 860 F.3d at 471 ("That is the crucial element missing here: in our case, only one side of
8 the "v" has consented to the magistrate judge, and under the statute, that is not enough."); *see also*
9 *id.* at 479 (Easterbrook, J., dissenting from denial of rehearing en banc) ("The suit A v. B & C
10 could go on for years before C is finally dismissed or discovered to be nonexistent; why can't A
11 and B agree in the meantime that their dispute will be resolved by a magistrate judge?"). While
12 this court is sympathetic to the position articulated by the *Coleman* dissent, as several of the
13 parties here have pointed out, a judgment issued by the magistrate judge under the circumstances
14 currently present in this case might not bind defendant Lee, who has been served but has not
15 appeared. *See Henry v. Tri-Services, Inc.*, 33 F.3d 931 (8th Cir. 1994).

16 Given this ambiguity in the law in the absence of guidance from the Supreme Court or the
17 Ninth Circuit, and to ensure the finality of the court's decisions, the court errs on the side of
18 caution in avoiding embedding a possible jurisdictional flaw in the record. The court thus
19 declines to refer this matter to the magistrate judge under 28 U.S.C. § 636(c) at this juncture. If
20 defendant Lee is dismissed or else judgment issued against him, or if he appears and consents to
21 the magistrate judge's jurisdiction while all other parties maintain their consents, any party may
22 renew a request for referral at that time. In the meantime, the magistrate judge may proceed as
23 provided by Local Rules 302 to 304.

24 IT IS SO ORDERED.

25 DATED: August 23, 2017.

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28 UNITED STATES DISTRICT JUDGE