

United States District Court
For the Northern District of California

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

WILLIAM H. GROSSMAN,)	Case No. 12-3532-SC
)	
Plaintiff,)	<u>ORDER DISMISSING COMPLAINT</u>
)	
v.)	
)	
JP MORGAN CHASE, et al.,)	
)	
Defendants.)	
)	

On July 6, 2012, Plaintiff William H. Grossman ("Plaintiff") filed (1) a complaint challenging the purportedly wrongful foreclosure of his home and (2) an ex parte application for a temporary restraining order that would cancel the foreclosure and prevent his eviction from, or the sale of, his house. ECF No. 1 ("Compl."); ECF No. 3 ("TRO App."). Plaintiff attached his deed of trust and promissory note to the TRO application. On July 24, 2012, the Court denied Plaintiff's TRO application because he failed to establish a compelling need to proceed ex parte. ECF No. 12.

Plaintiff originally named Wells Fargo Bank N.A. ("Wells") as a defendant in this case. See Compl. On August 7, 2012, Wells filed a motion to dismiss the complaint. ECF No. 13 ("Mot."). No other defendant joined Wells's motion. Plaintiff did not file an

1 opposition (or, as required by Civil Local Rule 7-3(b), a notice of
2 nonopposition) and Wells did not file a reply. Then, on the eve of
3 the motion hearing, Plaintiff voluntarily dismissed Wells. ECF No.
4 19. Wells is no longer a party to this action and no other
5 defendant joined its motion. The motion to dismiss is therefore
6 moot. Accordingly, the motion is DENIED.

7 The Court observes, however, that Wells's motion had merit.
8 The complaint asserts ten causes of action, two of which are based
9 on federal law. Compl. ¶¶ 47-55 (asserting claims based on the
10 Truth in Lending Act ("TILA") and Real Estate Settlement Procedure
11 Act ("RESPA")). The other eight causes of action are based on
12 California state law, and rely on the Court's supplemental
13 jurisdiction. See Compl. ¶¶ 2-3 (identifying TILA and RESPA claims
14 as source of Court's original jurisdiction and invoking
15 supplemental jurisdiction for the remainder of Plaintiff's claims).
16 The Court concludes that Plaintiff's TILA and RESPA claims are
17 time-barred and, in the absence of a viable federal claim, the
18 Court declines to exercise supplemental jurisdiction over the
19 remaining state-law claims. 28 U.S.C. § 1361(c)(3).

20 Though Plaintiff's complaint is conspicuously silent about
21 numerous material facts, including the date that Plaintiff closed
22 on his now-foreclosed loan, see Compl. at 5 (chronological
23 statement of case which omits dates), the deed of trust and note
24 submitted along with Plaintiff's TRO show that Plaintiff closed on
25 his loan on December 7, 2007 -- more than four years before
26 Plaintiff filed his complaint. TILA claims accrue on the date the
27 loan transaction closes and have a statute of limitations of either
28 one or three years, depending on the relief sought. See Patague v.

1 Wells Fargo Bank, N.A., C 10-03460 SBA, 2010 WL 4695480, at *2
2 (N.D. Cal. Nov. 8, 2010). Either way, Plaintiff's TILA claim is
3 clearly time-barred. Plaintiff's RESPA claim is time-barred for
4 the same reasons. See Compl. at 21 (bringing RESPA claim under 12
5 U.S.C. § 2605); Patague, 2010 WL 4695480, at *3 (explaining that §
6 2605 claims are subject to a three-year statute of limitations).
7 Accordingly, the Court DISMISSES Plaintiff's TILA and RESPA claims
8 sua sponte. See Shoop v. Deutsche Bank Nat. Trust Co., 465 F.
9 App'x 646 (9th Cir. 2012) (upholding district court's dismissal of
10 time-barred TILA claim where plaintiffs, unlike here, were not
11 represented by counsel and were never given an opportunity to
12 respond to a motion to dismiss). Lacking jurisdiction over
13 Plaintiff's federal claims, the Court declines to assert
14 supplemental jurisdiction over his state law claims.¹

15 The instant case is hereby DISMISSED.

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17 IT IS SO ORDERED.

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19 Dated: November 14, 2012


UNITED STATES DISTRICT JUDGE

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23 ¹ The complaint mentions 28 U.S.C. § 1334 as a possible basis for
24 federal jurisdiction. That statute, however, confers federal
25 jurisdiction over bankruptcy proceedings. As Plaintiff's counsel
26 must be aware, this is not a bankruptcy proceeding. The Court
27 notes, moreover, that the complaint is a lightly edited copy of a
28 form pleading available on the Internet at
www.scribd.com/doc/53663589/Verified-Rico-Complaint-Template.
Plaintiff's counsel is reminded that, whatever the true authorship
of the pleading he signed, Rule 11 holds him responsible for its
contents and for conducting a reasonable inquiry into its factual
and legal assertions. See Fed. R. Civ. P. 11(b).