

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

3  
4 In re:

No. C 13-5424 CW

5 RALPH DOMINIC VACCARO,  
6                               Debtor.

Bk. Nos.   13-54338 ASW  
             13-05145 ASW

ORDER DENYING MOTION TO  
WITHDRAW THE REFERENCE

7 \_\_\_\_\_/  
8 RALPH VACCARO,  
9                               Plaintiff,

10                              v.

11 LONG BEACH MORTGAGE COMPANY;  
12 SELECT PORTFOLIO SERVICING, INC.;  
13 DEUTSCHE BANK NATIONAL TRUST  
14 COMPANY,

15                              Defendants.  
16 \_\_\_\_\_/

17               Defendants Select Portfolio Servicing, Inc. and Deutsche Bank  
18 National Trust Company have filed a motion to withdraw the  
19 reference to the bankruptcy court for this adversary proceeding.  
20 Pro se Plaintiff and Debtor Ralph Vaccaro did not file a response  
21 to the motion to withdraw. Having considered the papers filed by  
22 Defendants and the record in the bankruptcy case, the Court DENIES  
23 the motion to withdraw the reference.

24                              BACKGROUND

25               On August 13, 2013, Debtor filed a voluntary Chapter 13  
26 Petition. Defendant Deutsche Bank National Trust Company filed a  
27 secured claim in the amount of \$1,028,419.69. On October 18,  
28 2013, Debtor filed an adversary proceeding against Long Beach

1 Mortgage Company, Select Portfolio Servicing, Inc., and Deutsche  
2 Bank National Trust Company. In his complaint in the adversary  
3 proceeding, Debtor seeks to enjoin foreclosure on his home, on  
4 which Defendant Deutsche Bank holds a deed of trust. Debtor  
5 alleges that Defendants "broke predatory lending laws and Truth in  
6 Lending Act" and seeks damages for violation of the California  
7 Consumers Legal Remedies Act, Cal. Civil Code §§ 1750, et seq.  
8 Bankruptcy Court 13-54338, Docket No. 1 at ¶ 8.  
9

10 DISCUSSION

11 Title 28 U.S.C. § 157 classifies matters in bankruptcy cases  
12 as either "'core proceedings,' in which the bankruptcy court 'may  
13 enter appropriate orders and judgments,' or 'non-core  
14 proceedings,' which the court may hear but for which it may only  
15 submit proposed findings of fact and conclusions of law to the  
16 district court for de novo review." Security Farms v. Int'l Bhd.  
17 of Teamsters, 124 F.3d 999, 1008 (9th Cir. 1997) (quoting 28  
18 U.S.C. § 157).  
19

20 Claims "arising under" or "arising in" Title 11 of the United  
21 States Code are core proceedings. In re Harris Pine Mills, 44  
22 F.3d 1431, 1435 (9th Cir. 1995). A claim arises under Title 11 if  
23 it involves "a cause of action created or determined by a  
24 statutory provision of Title 11," while a claim arises in Title 11  
25 if it is an administrative matter that arises only in bankruptcy  
26 cases. Id. (quoting In re Wood, 825 F.2d 90, 96-97 (5th Cir.  
27 1987)). "If the proceeding does not invoke a substantive right  
28

1 created by the federal bankruptcy law and is one that could exist  
2 outside of bankruptcy it is not a core proceeding." Id. (quoting  
3 In re Wood, 825 F.2d at 97). "Section 157 . . . mandates  
4 withdrawal [of the reference to the bankruptcy court] in cases  
5 requiring material consideration of non-bankruptcy federal law."  
6 Security Farms, 124 F.3d at 1008 (citing 28 U.S.C. § 157(d)).

7 "The district court may withdraw, in whole or in part, any  
8 case or proceeding referred under [§ 157], on its own motion or on  
9 timely motion of any party, for cause shown." 28 U.S.C. § 157(d).

10 "In determining whether cause exists, a district court should  
11 consider the efficient use of judicial resources, delay and costs  
12 to the parties, uniformity of bankruptcy administration, the  
13 prevention of forum shopping, and other related factors."

14 Security Farms, 124 F.3d at 1008 (citing In re Orion Pictures  
15 Corp., 4 F.3d 1095, 1101 (2nd Cir. 1993)). "A district court  
16 considering whether to withdraw the reference should first  
17 evaluate whether the claim is core or non-core, since it is upon  
18 this issue that questions of efficiency and uniformity will turn."  
19 In re Orion Pictures Corp., 4 F.3d at 1101.

20 The claims raised by Debtor in the adversary proceeding are  
21 not core claims. Rather, Debtor asserts a claim under  
22 California's Consumer Legal Remedies Act, and cites other  
23 California law and the federal Truth in Lending Act. None of  
24 these claims depend on bankruptcy laws, and any of them could  
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1 proceed in another court. Accordingly, the Court finds that  
2 Debtor's claims are not core issues.

3 Defendants argue that the efficient use of judicial resources  
4 supports a finding of cause because the bankruptcy court can only  
5 render a final judgment on non-core proceedings if both parties  
6 consent. 28 U.S.C. § 157(c). Defendants assert that Debtor does  
7 not consent to entry of a final order of judgment by the  
8 bankruptcy court. However, Defendants' exhibit states that Debtor  
9 "does consent to entry of a final order of judgment by bankruptcy  
10 court." Defendants' Request for Judicial Notice, Exhibit G at 3  
11 (emphasis added). Defendants do not state that they do not  
12 consent to entry of judgment by the bankruptcy court.  
13 Accordingly, this factor does not weigh in favor of a finding of  
14 cause to withdraw the reference.  
15

16 Defendants also argue that the factor of delay and costs to  
17 the parties favors withdrawal because the case was recently filed  
18 and Defendants have not yet been served with the complaint.  
19 Accordingly, Defendants argue that proceeding in this Court will  
20 not result in any undue delay or costs. While there might not be  
21 any additional delay or cost to proceeding in this Court,  
22 Defendants also have not shown that there would be any delay or  
23 cost to proceeding in the bankruptcy court. This factor does not  
24 weigh in favor of a finding of cause to withdraw the reference.  
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1 The next factor is uniformity of bankruptcy administration.  
2 This factor does not weigh in favor of a finding of cause to  
3 withdraw the reference.

4 Finally, Defendants argue, "because the district court will  
5 be involved in this case regardless of whether the reference is  
6 withdrawn, there is no forum shopping." Defendants' Motion at 6.  
7 However, this argument is based on Defendants' erroneous  
8 contention that Debtor does not consent to entry of judgment by  
9 the bankruptcy court. This factor also does not weigh in favor of  
10 a finding of cause to withdraw the reference.  
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12 The Court finds that Plaintiff's claims are not core claims.  
13 However, none of the factors to be considered when determining  
14 whether cause exists to withdraw the reference weigh in favor of  
15 withdrawal of the reference. Accordingly, the Court DENIES the  
16 motion to withdraw the reference.  
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18 IT IS SO ORDERED.

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20 Dated: 2/27/2014

  
CLAUDIA WILKEN  
United States District Judge