

**\*E-FILED 12-14-2011\***

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

JAIME MARCOS,

No. C11-04000 HRL

Plaintiff,

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR REMAND**

v.

**[Re: Docket No. 34]**

EQUITY ONE LENDERS GROUP, aka  
EQUITY ONE SALES CORPORATION, aka  
EQUITY ONE LENDERS SERVICES, INC.,  
aka DREAMMAKERS REAL ESTATE  
SERVICES INC., aka EQUITY LENDERS  
NETWORK INC., aka THE BARTON  
FINANCIAL GROUP; JEFF B. BARTON;  
CAMERON W. BARTON; HAMILTON  
FINANCE, aka HAMILTON REALTY; BEE  
LAY TAY, aka BEE HAMILTON; WELLS  
FARGO HOME MORTGAGE, INC., a division  
of WELLS FARGO BANK, N.A.; E\*TRADE  
MORTGAGE CORPORATION; BANK OF  
AMERICA, N.A. and DOES 1 through 50,

Defendants.

On July 13, 2011, Marcos filed the instant action in Santa Clara County Superior Court for alleged predatory lending practices in connection with his home mortgages. His complaint included a claim for "Rescission and Damages Under TILA [the Truth in Lending Act, 15 U.S.C. § 1601, et seq.] and HOEPA [the Home Ownership and Equity Protection Act of 1994]." The remaining claims were all based on state law. On August 15, 2011, Bank of America and Wells Fargo removed the matter here, asserting federal question jurisdiction.

1           Shortly after removal, Bank of America, Wells Fargo, and E\*Trade Mortgage  
2 Corporation (E\*Trade) moved to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6).  
3 Those motions were granted as to plaintiff's federal claim for relief.<sup>1</sup> In sum, plaintiff failed to  
4 allege facts supporting any violation of HOEPA. His claim for rescission under TILA was  
5 barred by the three-year absolute statute of limitations. And, his claims for damages under  
6 TILA was also untimely. Although the court expressed some doubt whether the defects could  
7 be remedied by amendment, plaintiff was given leave to amend his HOEPA and TILA damages  
8 claim if, consistent with Fed. R. Civ. P. 11, he could truthfully allege facts supporting a claim  
9 for relief. Because the claim providing the sole basis for federal jurisdiction had been  
10 dismissed, the court expressly stated that it would not exercise jurisdiction over Marcos' state  
11 law claims unless and until he adequately pled a viable federal claim for relief.

12           Plaintiff filed a First Amended Complaint in which he drops all federal claims for relief.<sup>2</sup>  
13 He now moves to remand this matter to the state court. Wells Fargo and Bank of America do  
14 not oppose the motion, but E\*Trade does. All parties who have appeared before this court have  
15 expressly consented that all proceedings in this action may be heard and finally adjudicated by  
16 the undersigned. 28 U.S.C. § 636(c); FED. R. CIV. P. 73. The matter is deemed suitable for  
17 determination without oral argument, and the December 20, 2011 hearing is vacated. Civ. L.R.  
18 7-1(b). Upon consideration of the moving and responding papers, the court grants the motion.

19           The propriety of removal jurisdiction is determined "on the basis of the pleadings filed  
20 at the time of removal without reference to subsequent amendments." Sparta Surgical Corp. v.  
21 Nat'l Ass'n of Securities Dealers, Inc., 159 F.3d 1209, 1213 (9th Cir. 1998). Although a  
22 plaintiff cannot compel remand by subsequently amending a complaint to eliminate the federal  
23 question upon which removal was based, see id., when all federal claims have been dismissed, it

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24  
25           <sup>1</sup> At the time of removal, this court was told that defendants Equity Lenders  
26 Group, Jeff B. Barton, and Cameron W. Barton had been served and consented to the  
removal. None of these defendants has appeared before this court or taken any part in the  
proceedings here.

27           <sup>2</sup> Although the amended complaint continues to allege federal question  
28 jurisdiction based on plaintiff's "TILA and related claims" and "supplemental jurisdiction"  
over plaintiff's state law claims, this apparently is an oversight. None of the asserted claims  
arise under federal law.

1 is within the court's discretion whether or not to exercise supplemental jurisdiction over the  
2 remaining claims. See Carlsbad Tech., Inc. v. HIF BIO, Inc., 556 U.S. 635, 129 S. Ct. 1862,  
3 1866, 173 L.Ed.2d 843 (2009) ("A district court's decision whether to exercise [supplemental]  
4 jurisdiction after dismissing every claim over which it had original jurisdiction is purely  
5 discretionary."); see also Harrell v. 20th Century Ins. Co., 934 F.2d 203, 205 (9th Cir. 1991) ("It  
6 is generally within a district court's discretion either to retain jurisdiction to adjudicate the  
7 pendent state claims or to remand them to state court."). "[I]n the usual case in which all  
8 federal-law claims are eliminated before trial, the balance of factors to be considered under the  
9 pendent jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point  
10 toward declining to exercise jurisdiction over the remaining state-law claims." Carnegie-  
11 Mellon Univ. v. Cohill, 484 U.S. 343, 350 n.7, 108 S. Ct. 614, 98 L.Ed.2d 720 (1988),  
12 superceded on other grounds by statute as recognized in Fent v. Oklahoma Water Res. Bd., 235  
13 F.3d 553, 557 (10th Cir. 2000); see also Harrell, 934 F.2d at 205 (observing that "it is generally  
14 preferable for a district court to remand remaining pendent claims to state court.").

15 Here, the court finds remand appropriate. This case is in its early stages. Few federal  
16 resources have been expended in determining the sufficiency of the pleadings as to the sole  
17 federal claim. The court finds no compelling reason to retain jurisdiction over the remaining  
18 state law claims, when the state courts are equally competent and more familiar with the  
19 governing law. Nor does this court find that litigating here is any more convenient to the parties  
20 than litigating in the state court. E\*Trade argues that, by dropping his federal claims now,  
21 plaintiff is manipulating the system and is merely seeking to introduce further delay in the  
22 foreclosure proceedings. The record, however, simply shows that following motions practice,  
23 the court dismissed the sole federal claim and gave plaintiff an opportunity to remedy the  
24 identified defects. Plaintiff says that he has determined that he cannot. Under the  
25 circumstances presented, the court finds no basis to conclude that plaintiff has acted in bad  
26 faith.

27 Based on the foregoing, plaintiff's motion to remand this action to the Santa Clara  
28 County Superior Court is granted. E\*Trade's pending motions to dismiss and to strike are taken


**United States District Court**

For the Northern District of California

1 off calendar, and all scheduled deadlines and appearances before this court are vacated. The  
2 Clerk shall close the file.

3 SO ORDERED.

4 Dated: December 14, 2011

  
5 HOWARD R. LLOYD  
6 UNITED STATES MAGISTRATE JUDGE

1 5:11-cv-04000-HRL Notice has been electronically mailed to:

2 Andrea McDonald Hicks    hicksa@bryancave.com, dominic.sims@bryancave.com,  
3 grace.wayte@bryancave.com

4 Frederick Alan Haist    fhaist@pdlawyers.com, nmorales@pdlawyers.com,  
5 spalmer@pdlawyers.com

6 Robert E. Boone , III    reboone@bryancave.com, jmsmith@bryancave.com

7 Roger Dean Wintle    rdw@hlgusa.com, mlr@hlgusa.com, mnw@hlgusa.com

8 Roland Paul Reynolds    rreynolds@pdlawyers.com, nmorales@pdlawyers.com

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