

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

CRAIG MOSKOWITZ, on behalf of)	CIVIL NO. 17-00299 HG-KSC
himself and all others)	
similarly situated,)	
)	
Plaintiff,)	
)	
vs.)	
)	
AMERICAN SAVINGS BANK, F.S.B.,)	
)	
)	
Defendant.)	
)	

ORDER OVERRULING PLAINTIFF’S OBJECTIONS TO THE MAGISTRATE JUDGE’S FINDINGS AND RECOMMENDATION (ECF No. 38)

and

ADOPTING THE MAGISTRATE JUDGE’S FINDINGS AND RECOMMENDATION TO GRANT IN PART AND DENY IN PART DEFENDANT AMERICAN SAVINGS BANK, F.S.B.’S MOTION FOR RULE 41(d) COSTS AND STAY OF PROCEEDINGS (ECF No. 36)

On February 21, 2017, Plaintiff Craig Moskowitz, on behalf of himself and others similarly situated, filed a lawsuit in the United States District Court for the District of Connecticut against Defendant American Savings Bank, F.S.B., Moskowitz v. American Savings Bank, F.S.B., Civ. No. 3:17-00307AWT.

On May 15, 2017, Plaintiff filed a Notice of Voluntary Dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i).

A month later, on June 23, 2017, Plaintiff filed a nearly

identical Complaint that asserted the same claims against the same Defendant in this District. (ECF No. 1).

Defendant American Savings Bank, F.S.B. filed a Motion for Costs and Stay of Proceedings related to the District of Connecticut proceeding pursuant to Fed. R. Civ. P. 41(d). (ECF No. 15).

On October 30, 2017, the Magistrate Judge issued a FINDINGS AND RECOMMENDATION TO GRANT IN PART AND DENY IN PART DEFENDANT AMERICAN SAVINGS BANK, F.S.B.'S MOTION FOR RULE 41(d) COSTS AND STAY OF PROCEEDINGS. (ECF No. 36).

On November 13, 2017, Plaintiff filed Objections to the Magistrate Judge's Findings and Recommendation. (ECF No. 38).

On November 27, 2017, Defendant filed its Response. (ECF No. 39).

Plaintiff's Objections (ECF No. 38) are **OVERRULED**.

The Magistrate Judge's Findings and Recommendation (ECF No. 36) is **ADOPTED**.

STANDARD OF REVIEW

28 U.S.C. § 636(b)(1)(B) permits a district court judge to designate a magistrate judge to determine matters pending before the court and to submit a findings and recommendation to the district court judge. Any party may object to a magistrate judge's findings and recommendation, pursuant to District of

Hawaii Local Rule 74.2.

The district court judge shall make a de novo determination of those portions of the findings and recommendation to which a party properly objects and may accept, reject, or modify, in whole or in part, the findings and recommendation made by the magistrate judge. 28 U.S.C. § 636(b)(1)(c); Dawson v. Marshall, 561 F.3d 930, 933 (9th Cir. 2009).

ANALYSIS

Plaintiff objects to the Magistrate Judge's October 30, 2017 Findings and Recommendation (ECF No. 36). Plaintiff specifically objects to the recommendation to award Defendant costs pursuant to Fed. R. Civ. P. 41(d). Plaintiff's Objections (ECF No. 38) merely repeat arguments he made to the Magistrate Judge in Opposition to Defendant's Motion.

Contrary to the Plaintiff's position, decisions in the District Court for the District of Hawaii have found that Federal Rule of Civil Procedure 41(d) allows for recovery of both expenses and attorneys' fees. Aloha Airlines, Inc. v. Mesa Air Grp., Inc., Civ. No. 07-00007 DAE-KSC, 2007 WL 2320672, *1 (D. Haw. Aug. 10, 2007) (Order Adopting Findings and Recommendation to Award Attorneys' Fees pursuant to Fed. R. Civ. P. 41(d)); Uy v. HSBC Bank U.S., Nat'l Assn, Civ. No. 14-00261 HG-KSC, 2014 WL 6471331, *2 (D. Haw. Nov. 3, 2014), report and recommendation

adopted, 2014 WL 6471747 (D. Haw. Nov. 18, 2014).

Numerous other courts in the Ninth Circuit have agreed. See, e.g., Platinum Logistics, Inc. v. Platinum Cargo, 2015 WL 11921401, *5 (S.D. Cal. Sept. 15, 2015) (finding persuasive the reasoning of the cases finding that attorneys' fees are recoverable under Rule 41(d) and collecting cases); Whole E Nature, LLC v. Wonderful Co., LLC, 2017 WL 4227150, *5-*6 (S.D. Cal. Sept. 22, 2017).

A showing of subjective bad faith, vexatiousness, or forum shopping is also not required for an award pursuant to Fed. R. Civ. P. 41(d). Uy, 2014 WL 6471331, at *2; Whole E Nature, LLC, 2017 WL 4227150, *5-*6 (finding costs including attorneys' fees appropriate given the "remedial purpose and discretionary nature" of Rule 41(d)).

Plaintiff's Objections do not contain any information that requires a change in the Findings and Recommendation of the Magistrate Judge.

CONCLUSION

Plaintiff's Objections to the Magistrate Judge's Findings and Recommendation (ECF No. 38) are **OVERRULED**.

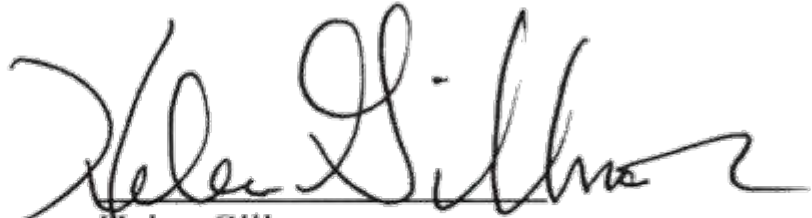
Pursuant to 28 U.S.C. § 636(b)(1)(C) and Local Rule 74.2, the "FINDINGS AND RECOMMENDATION TO GRANT IN PART AND DENY IN PART DEFENDANT AMERICAN SAVINGS BANK, F.S.B.'S MOTION FOR RULE

41(d) COSTS AND STAY OF PROCEEDINGS" (ECF No. 36) is **ADOPTED AS THE OPINION AND ORDER OF THIS COURT.**

IT IS SO ORDERED.

DATED: December 26, 2017, Honolulu, Hawaii.




Helen Gillmor
United States District Judge

Craig Moskowitz, on behalf of himself and all others similarly situated v. American Savings Bank, F.S.B., Civ. No. 17-00299 HG-KSC; ORDER OVERRULING PLAINTIFF'S OBJECTIONS TO THE MAGISTRATE JUDGE'S FINDINGS AND RECOMMENDATION (ECF No. 38) and ADOPTING THE MAGISTRATE JUDGE'S FINDINGS AND RECOMMENDATION TO GRANT IN PART AND DENY IN PART DEFENDANT AMERICAN SAVINGS BANK, F.S.B.'S MOTION FOR RULE 41(d) COSTS AND STAY OF PROCEEDINGS (ECF No. 36)