

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

GREGORY LIEBER and LORENA LIEBER,

Plaintiff,

Case No. 15-cv-14157

v.

Honorable Thomas L. Ludington
Magistrate Judge Patricia T. Morris

EVERBANK MORTGAGE COMPANY,

Defendant.

**ORDER ADOPTING REPORT AND RECOMMENDATION, GRANTING IN PART
AND DENYING IN PART DEFENDANT'S MOTION TO DISMISS, AND DISMISSING
COUNT I OF PLAINTIFFS' COMPLAINT**

On October 13, 2015, Plaintiffs Gregory and Lorena Lieber filed a complaint against Defendant Everbank Mortgage Company alleging that Defendant breached the mortgage contract between the parties, violated Michigan law governing the modification of mortgages, violated Michigan foreclosure law, and violated the Real Estate Settlement Procedures Act ("RESPA"). Not. of Removal, ECF No. 1. Defendant removed the case on November 25, 2015. *Id.* The case was referred to Magistrate Judge Patricia T. Morris for management of all pre-trial matters.

Plaintiffs filed an amended complaint on January 8, 2016. ECF No. 12. The amended complaint added Ditech Financial LLC as a defendant¹ and eliminated two counts of the original complaint, leaving only Plaintiffs' breach of contract and RESPA claims. On February 8, 2016, Defendant Everbank filed a motion to dismiss.

On June 24, 2016, Judge Morris issued a report recommending that Everbank's motion to dismiss be granted in part and denied in part. *See Rep. & Rec. 7-12*, ECF No. 20. Judge Morris concluded that Plaintiffs did not state a claim for breach of contract but did sufficiently allege

¹ Ditech was dismissed by stipulation on January 22, 2016.

facts in support of a RESPA claim. Judge Morris also noted that during briefing on Defendant's motion, Plaintiffs made an informal request to amend their complaint. Judge Morris recommended disregarding the request as improperly made.

Although the Magistrate Judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report, neither Plaintiffs nor Defendant filed any objections. The election not to file objections to the Magistrate Judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation, ECF No. 20, is **ADOPTED**.

It is further **ORDERED** that Defendant Everbank Mortgage Company's Motion to Dismiss, ECF No. 16, is **GRANTED in part and DENIED in part**.

It is further **ORDERED** that Count I of Plaintiffs Gregory and Lorena Lieber's Amended Complaint, ECF No. 12, is **DISMISSED with prejudice**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: July 28, 2016

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on July 28, 2016.

s/Michael A. Sian
MICHAEL A. SIAN, Case Manager