IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

MDF LANDCO, INC.; WILLIAM E. MANDERFIED; and ELANA MANDERFIELD,

Plaintiffs,

v.

LARRY B. LITTON, JR.; COMMUNITY LENDING INC.; R.K. ARNOLD; LITTON LOAN SERVICING LP; MORTGAGE ELECTRONIC REGISTRATION SYSTEM, INC.; GREG FOWLER; US FUNDING GROUP, INC.; ERIC HOLDER; and TIMOTHY GEITHNER,

Defendants.

09-CV-1235-BR

ORDER

BROWN, Judge.

Following the hearing February 11, 2010, two Motions remained pending (the Motion (#26) to Dismiss of Defendant R.K. Arnold and the Motion (#29) to Dismiss of Defendant Mortgage Electronic Registration System, Inc.). Plaintiffs' claims against all other Defendants had been dismissed without prejudice. The Court directed Plaintiffs to respond to or to concede these pending Motions by March 1, 2010. Instead

Plaintiff William E. Manderfield filed Plaintiff's Emergency Motion (#37) to Voluntarily Dismiss this Case Without Prejudice, and the two remaining Defendants filed a Response (#38) to Plaintiff's Motion asserting (1) Plaintiff's Motion (#38) should be construed as a Notice of Voluntary Dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i), which effectively dismisses William E. Manderfield's remaining claims in the action, and (2) Plaintiff's Motion cannot similarly be construed as a Rule 41(a)(1(A)(i) notice by Plaintiff Elana M. Manderfield because Mr. Manderfield does not represent Ms. Manderfield, and, therefore, the Court should grant the pending Motions of the two remaining Defendants as against Ms. Manderfield and dismiss her claims against them.

The Court agrees it should construe Plaintiff's Emergency Motion to Voluntarily Dismiss this Case Without Prejudice (#37) as a Rule 41(a)(1)(A)(i) Notice of Voluntary Dismissal without prejudice. Accordingly, the Court **DISMISSES without prejudice** all claims by Plaintiff William E. Manderfield and **DENIES as moot** Plaintiff's Emergency Motion to Voluntarily Dismiss this Case Without Prejudice (#37).

The Court also agrees Plaintiff's Motion (#37) does not serve to dismiss Plaintiff Elana M. Manderfield's claims against Defendant R.K. Arnold and Defendant Mortgage Electronic Registration System, Inc. Because Plaintiff Elana M. Manderfield did not respond as ordered to the pending Motions (#26, #29) of these Defendants, these Motions are fully briefed. Based on the

record, the Court **GRANTS** Defendant R. K. Arnold's Motion (#26) to Dismiss for lack of personal jurisdiction and does not reach the remainder of Defendant Arnold's arguments in support of that Motion. (The Court notes a dismissal for lack of personal jurisdiction is a dismissal without prejudice.) Based on the record, the Court also **GRANTS** the Motion (#29) to Dismiss of Defendant Mortgage Electronic Registration System, Inc., pursuant to Federal Rule of Civil Procedure 12 (b)(6) for failure to state a claim. Ordinarily, the Court would offer a plaintiff in Ms. Manderfield's position the opportunity to file an amended complaint to attempt to cure the deficiencies in her original Complaint as to this Defendant. Ms. Manderfield, however, has not participated in this action and, in particular, did not file a response to these remaining Motions. Accordingly, there does not appear any reason to believe Ms. Manderfield wishes to attempt to cure the deficiencies in her original Complaint. In the exercise of its case-management discretion, therefore, the Court concludes the reasonable conclusion of her claims against these two Defendants is a dismissal without prejudice.

The Court directs the Clerk of Court to enter a Judgment of Dismissal of this action.

IT IS SO ORDERED.

DATED this 12th day of March, 2010.

/s/ Anna J. Brown
ANNA J. BROWN
United States District Judge

ORDER