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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 EDWARD FOGG, ET AL.,

9 Plaintiffs,

10 v.

11 SELENE FINANCE LP, ET AL.,

12 Defendants.
13

CASE NO. 3:21-cv-05351-JHC

ORDER

14 **I**

15 **INTRODUCTION**

16 Before the Court is Defendants' motion for summary judgment. Dkt. # 13. For the
17 reasons below, the Court DISMISSES with prejudice all the federal claims. And because the
18 Court declines to exercise jurisdiction over the remaining state-law claims, the Court
19 REMANDS the case to the Clark County Superior Court of the State of Washington.

20 **II**

21 **BACKGROUND**

22 Edward and Maria Fogg own and manage a property located in Vancouver, Washington.
23 Dkt. # 1-1 at 5 (complaint). In 2009, the Foggs executed a promissory note and deed of trust in
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1 connection with the property. *Id.* Wilmington Savings Fund Society, FSB currently holds the
2 promissory note, and Selene Finance, LP currently acts as the loan's servicer. *Id.* at 5–6.

3 A little over a decade ago, the Foggs filed for Chapter 11 bankruptcy. Dkt. # 14-3. The
4 bankruptcy plan that followed modified the terms of the loan: It stated that the interest rate would
5 be 4.5% per annum, and that the monthly installment of principal and interest (excluding escrow
6 costs) would be \$602.05. Dkt. # 1-1 at 6; *see also* Dkt. ## 16-7 at 3, 14-3.

7 The Foggs have had a rocky relationship with Selene since Selene began servicing their
8 loan. Most importantly here, the Foggs allege that Selene failed to respond to their written
9 statements (known as “qualified written requests” or “QWRs”) alleging account errors and
10 requesting additional information. *See generally* Dkt. ## 1-1; 16. The Foggs also contend that
11 Selene impermissibly reported delinquencies to credit reporting agencies, that Selene failed to
12 adjust their loan to reflect the modified payment schedule imposed by the bankruptcy plan, and
13 that Selene improperly refused their method of payment (which used two checks instead of one).
14 *Id.*

15 In April 2021, the Foggs filed this action in Clark County Superior Court. Dkt. # 1-1.
16 The complaint appears to assert two federal causes of action under the Real Estate Settlement
17 and Procedure Act (RESPA): (1) a cause of action based on “Selene’s failure or refusal to timely
18 respond to plaintiffs’ Qualified Written Requests,” and (2) a cause of action based on “Selene’s
19 false report to credit reporting agencies that plaintiffs’ [*sic*] were in default.” Dkt. # 1-1 at 11–
20 12.¹ The Foggs remaining causes of action sound in state law, including breach of the
21 promissory note/deed of trust, breach of the duty of good faith and fair dealing, and violation of
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23 ¹ The Foggs’ brief states in passing that Defendants’ conduct violates the Fair Credit Reporting
24 Act (FCRA). Dkt. # 16 at 3. But the complaint does not state a cause of action under FCRA. *See*
generally Dkt. # 1-1. So the only federal causes of action in this case concern RESPA.

1 the Washington Consumer Protection Act (Washington CPA). *Id.* In May 2021, Defendants
2 removed the action to this Court based on federal question jurisdiction. Dkt. # 1.

3 In April 2022, this case was reassigned to the undersigned judge. Dkt. # 9. And in
4 January 2023, Defendants filed the motion for summary judgment at issue here. Dkt. # 13.

5 III

6 DISCUSSION

7 A. Federal RESPA Claims

8 RESPA requires loan servicers to timely respond to “qualified written requests”
9 (“QWRs”) from borrowers. A QWR is a “written correspondence” from a borrower that
10 “includes a statement of the reasons for the belief of the borrower, to the extent applicable, that
11 the account is in error or provides sufficient detail to the servicer regarding other information
12 sought by the borrower.” 12 U.S.C. § 2605(e)(1)(B). Within 30 days of the receipt of a QWR
13 (subject to a limited 15-day extension, *id.* § 2605(e)(4)), a servicer must take one of four actions:
14 (1) respond with a written explanation for why the servicer believes the account is correct, *id.*
15 § 2605(e)(2)(B)(i), (2) respond with a written explanation containing the information requested,
16 *id.* § 2605(e)(2)(C)(i), (3) respond with a written explanation for why the information requested
17 cannot be obtained, *id.*, or (4) make the corrections to the account requested by the borrower,
18 followed by a written explanation of that correction, *id.* § 2605(e)(2)(A). In addition, RESPA
19 prohibits a servicer from providing certain information to credit reporting agencies while it
20 responds to a borrower’s QWR:

21 During the 60-day period beginning on the date of the servicer’s receipt from any
22 borrower of a qualified written request relating to a dispute regarding the
23 borrower’s payments, a servicer may not provide information regarding any
overdue payment, owed by such borrower and relating to such period or qualified
written request, to any consumer reporting agency.

24 *Id.* § 2605(e)(3).

1 The Foggs assert two causes of action under RESPA: (1) a cause of action based on
2 “Selene’s failure or refusal to timely respond to plaintiffs’ Qualified Written Requests (fifth and
3 seventh causes of action²), and (2) a cause of action based on “Selene’s false report to credit
4 reporting agencies that plaintiffs’ [*sic*] were in default” (fourth cause of action). Dkt. # 1-1 at
5 11–12. Defendants are entitled to summary judgment on both theories of RESPA liability.

6 1. Alleged Failure to Timely Respond to QWRs

7 The Foggs first argue that Selene violated RESPA by failing to timely respond to their
8 QWRs. The Court disagrees.

9 The Foggs sent Selene a number of QWRs. Dkt. # 14-5 at 17. But the Foggs concede
10 that Selene responded to each QWR in a timely manner. Edward Fogg confirmed this during his
11 deposition:

12 Q: Okay. And you sent more than one QWR to Selene; correct?

13 A. I did, sir.

14 Q: Okay. And they responded to all of those; correct?

15 A. Yes.

16 Q. And with extensions, all of the responses to your QWRs were timely; were
17 they not?

18 A. They were timely. . . .

19 Dkt. # 14-5 at 17–18. Based on this admission, Selene satisfied its obligation to respond
20 to QWRs in a timely manner under RESPA. *See* 12 U.S.C. § 2605(e).

21 The Foggs nevertheless contend that Selene’s responses do not satisfy RESPA because
22 Selene made “inconsistent, confusing statements” or otherwise did not address the issues raised
23

24 ² The fifth and seventh causes of action are identical.

1 in the QWRs. Dkt. # 16 at 14–15. The crux of the Foggs’ argument is that they “disagreed with
2 some or most of” Selene’s responses to the QWRs. Dkt. # 14-5 at 18.

3 But this does not state a claim under RESPA. First, while the Foggs say that Selene did
4 not address the issues raised in the QWRs, their brief does not identify a single issue that went
5 unaddressed. Their brief does not, for example, point to a request in any QWR that went
6 unanswered in Selene’s corresponding response. Merely providing a laundry list of
7 documents—without specifically identifying how Selene’s responses were incomplete—is
8 insufficient. *See Indep. Towers of Washington v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003)
9 (“[J]udges are not like pigs, hunting for truffles buried in briefs.” (citation omitted)).

10 Second, the Foggs fail to show that Selene’s responses were misleading, confusing, or
11 incorrect. The Foggs provide a long, out-of-order list of statements made by Selene when
12 responding to the QWRs. Dkt. # 16 at 14. But they do not explain how any of those statements
13 were incorrect or confusing. Without explanation, it is difficult for the Court to understand what,
14 exactly, the Foggs find improper about the information Selene provided.³

15 But the Court can discern at least one possible inconsistency: In at least one response to a
16 QWR, Selene may have provided incorrect information about the principal amount due. In a
17 May 18, 2020 letter, Selene incorrectly stated that the monthly principal amount due was
18 \$658.69. Dkt. # 16-15 at 2.⁴ In fact, under the bankruptcy plan, the amount due for principal
19 and interest could not exceed \$602.05 per month. Dkt. # 16-7 at 3.

21 ³ For example, the Foggs assert that several documents state a total balance on the account that
22 relies on an incorrect monthly amount. Dkt. # 16 at 14–15. But the Foggs do not explain how those total
amounts are incorrect.

23 ⁴ The May 18 letter says that it was written in response to the Foggs’ correspondences on April
24 26, 2020 and May 1, 2020. But it does not appear that the parties have provided a copy of this
correspondence. So the Court cannot determine whether the Foggs explained the balance error to Selene
with sufficient clarity to enable Selene to respond accurately.

1 But this alone does not suffice under RESPA. Selene recognized this balance mistake
2 and corrected it less than a month later. In a letter dated June 10, 2020, Selene stated that it
3 “agrees with Mr. Fogg” and determined “that the mortgage account was not correct as ordered by
4 the bankruptcy court.” Dkt. # 16-16 at 2. In a June 12, 2020 letter, Selene said that it
5 “review[ed]” the Fogg account and “completed the necessary adjustments to [the] account to
6 align with the terms of the [bankruptcy] Order.” Dkt. # 14-4 at 2. And the Fogg presents no
7 argument that a mistake in a response to a QWR constitutes a per se RESPA violation, even
8 when that mistake is promptly corrected. *Cf.* 12 U.S.C. § 2605(e)(2)(B)(i) (when a servicer
9 believes an account to be accurate, the servicer must provide “a statement of reasons for which
10 *the servicer believes* the account of the borrower is correct *as determined by the servicer*”
11 (emphasis added)).

12 Accordingly, Defendants are entitled to summary judgment on this RESPA claim.

13 2. Alleged Reporting to Credit Agencies

14 The Fogg asserts that Selene violated RESPA by providing false reporting to credit
15 reporting agencies. Dkt. # 1-1 at 11. The Court disagrees.

16 As described above, RESPA prohibits a servicer from providing certain information to
17 credit reporting agencies while it responds to a borrower’s QWR:

18 During the 60-day period beginning on the date of the servicer’s receipt from any
19 borrower of a qualified written request relating to a dispute regarding the
20 borrower’s payments, a servicer may not provide information regarding any
overdue payment, owed by such borrower and relating to such period or qualified
written request, to any consumer reporting agency.

21 12 U.S.C. § 2605(e)(3).

22 The Fogg has failed to demonstrate a material issue of fact as to whether Selene
23 impermissibly reported credit information to any consumer reporting agency. The Fogg’s brief
24 points to no evidence that Selene did, in fact, submit negative information to a credit agency (nor

1 did they present any legal or factual argument that such negative reporting occurred in violation
2 of RESPA). *See, e.g., Menashe v. Bank of New York*, 850 F. Supp. 2d 1120, 1133 (D. Haw.
3 2012) (criticizing a complaint because it “fail[ed] to describe when and to whom [the servicer]
4 allegedly provided the [credit] information”). Their brief does not, for example, identify how
5 any such reports hurt their credit, or whether any such reports were filed within the 60-day non-
6 reporting period of RESPA. To the contrary, Selene’s brief suggests (Dkt. # 13 at 4) that it sent a
7 letter in May 2020 indicating that Selene had *not* sent any adverse information to the credit
8 reporting agencies.⁵ *See* Dkt. # 14-8 at 8 (“Upon review of the account, our records do not
9 indicate Selene reported adverse information to the major credit reporting agencies.”). With no
10 evidence that Selene reported information to credit agencies in violation of RESPA, the Foggs’
11 claim fails.

12 Even assuming that Selene sent negative information to credit agencies in violation of
13 RESPA, the Foggs’ claim still suffers a fatal flaw: The Foggs have failed to demonstrate that
14 they suffered actual damages *flowing from* the alleged RESPA violations. This is a requirement
15 of the statute. In the absence of a pattern or practice of noncompliance with RESPA (which the
16 Foggs have not shown), the statute authorizes only “actual damages” that flow “as a result of
17 the” RESPA violation. *See* 12 U.S.C. § 2605(f)(1) (emphasis added)); *see also Lal v. Am. Home*
18 *Servicing, Inc.*, 680 F. Supp. 2d 1218, 1223 (E.D. Cal. 2010) (“Under RESPA, a borrower may
19 not recover actual damages for nonpecuniary losses.”); *id.* (to recover under RESPA, a plaintiff
20 must show that their actual damages are “a direct result of the failure to comply” with the
21 statute).

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23
24 ⁵ But it is unclear from either party’s brief whether Selene submitted information to credit
reporting agencies *after* this letter was sent.

1 The Foggs' brief does not discuss any damages sustained as a result of any alleged
2 RESPA violations (and as noted, the Foggs do not explain how Selene allegedly violated
3 RESPA's bar on disclosure). But as described in Defendants' briefing (Dkt. # 13 at 8–9; Dkt.
4 # 17 at 2–4), the Foggs' primary damages argument is that any alleged negative credit reporting
5 affected their ability to obtain more favorable financing terms on their properties. Without
6 further explanation or evidence, however, such a damages claim is speculative: The Foggs have
7 not pointed to any evidence that they could have obtained better financing terms but-for Selene's
8 alleged RESPA violations.⁶

9 Accordingly, Defendants are entitled to summary judgment on this RESPA claim.

10 B. State-Law Claims

11 When a court has subject matter jurisdiction over one or more claim, it may exercise
12 supplemental jurisdiction over related state-law claims. *See* 28 U.S.C. § 1367(a). But a court
13 may decline to exercise supplemental jurisdiction if it has “dismissed all claims over which it has
14 original jurisdiction.” *Id.* § 1367(c)(3). “The decision whether to continue to exercise
15 supplemental jurisdiction over state law claims after all federal claims have been dismissed lies
16 within the district court’s discretion.” *Satey v. JPMorgan Chase & Co.*, 521 F.3d 1087, 1091
17 (9th Cir. 2008) (quoting *Foster v. Wilson*, 504 F.3d 1046, 1051 (9th Cir. 2007)); *see also*
18 *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 639 (2009) (“A district court's decision
19 whether to exercise that jurisdiction after dismissing every claim over which it had original
20 jurisdiction is purely discretionary.”). But “in the usual case in which all federal-law claims are
21 eliminated before trial, the balance of factors to be considered under the pendent jurisdiction
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23 ⁶ The Court’s conclusion as to the lack of non-speculative damages applies *only* to the RESPA
24 claims. The Court expresses no opinion as to whether the Foggs can demonstrate damages for any state-
law claims.

1 doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to
2 exercise jurisdiction over the remaining state-law claims.” *Carnegie-Mellon Univ. v. Cohill*, 484
3 U.S. 343, 350 n.7 (1988); *see also Sanford v. MemberWorks, Inc.*, 625 F.3d 550, 561 (9th Cir.
4 2010).

5 The Court declines to exercise jurisdiction over the remaining state-law claims. Selene
6 removed this case based on federal question jurisdiction (Dkt. ## 1 at 2; 1-2), and all federal
7 claims have now been dismissed. *See Carnegie-Mellon*, 484 U.S. at 350 n.7; 28 U.S.C.
8 § 1367(c). Declining to exercise jurisdiction over the remaining claims is particularly
9 appropriate here because neither party provided meaningful, detailed briefing about the state-law
10 claims (for example, the briefs lack discussion of the elements of each claim).

11 This is not to say that the Foggs’ claims have no merit. The Court is puzzled by Selene’s
12 position that the Foggs breached the terms of their loan when it appears that the Foggs paid *more*
13 than the amount due each month but did so in two checks (instead of one) in a single envelope.
14 But Washington state courts are better equipped to consider this issue and the other state-law
15 issues raised in the motion for summary judgment.

16 When, as here, a court declines to exercise jurisdiction over any remaining state-law
17 claims, it may dismiss the claims without prejudice or remand the case to state court. *See*
18 *Carnegie-Mellon*, 484 U.S. at 357 (“[A] district court has discretion to remand to state court a
19 removed case involving pendent claims upon a proper determination that retaining jurisdiction
20 over the case would be inappropriate.”). The Court concludes that the principles of “economy,
21 convenience, fairness, and comity” favor remand. *Id.* Accordingly, the Court remands the case
22 to the Washington state court.

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IV

CONCLUSION

For the reasons above, the Court DISMISSES with prejudice all federal claims and REMANDS the remaining state-law claims to the Clark County Superior Court of the State of Washington. The Court STRIKES as moot the pending motion in limine (Dkt. # 18). The Clerk is DIRECTED to transmit a certified copy of this order and the record in this case to the Clark County Superior Court of the State of Washington.

Dated this 27th day of March, 2023.



John H. Chun
United States District Judge