

**UNITED STATES DISTRICT COURT**

**DISTRICT OF IDAHO**

STERLING MORTENSEN, et al.,

Plaintiffs,

vs.

HSBC BANK USA, et al.,

Defendants.

Case No. CV 10-234-S-EJL

**REPORT AND RECOMMENDATION**

Pending for a Report and Recommendation is Defendant LandAmerica Transnation's Motion to Dismiss (Dkt. 60). The Court recently entered an Order granting Plaintiff Mortensen's motion for leave to file an amended complaint, but only as to (1) the facts alleged in support of all claims originally brought, and (2) which defendants those facts support maintaining claims against. (Dkt. 102). The Order noted that the allegations contained in Mortensen's proposed amended complaint (Dkt. 73) and his arguments in an Objection he filed (Dkt. 88) did not set out sufficient facts to support his claims against Defendants HSBC Bank, Routh Crabtree & Olsen, Foreclosure Expeditors, LandAmerica Transnation, and GMAC Mortgage. The Court determined that those claims would be effectively dismissed by exclusion from any amended complaint allowed.

The Court provisionally allowed Mortensen to file an amended complaint omitting these five defendants, but provided the remaining named Defendants (America's Servicing Company, Northwest Trustee Service, Mortgage Electronic Services, Inc., and Silver State Financial Services, Inc.) time to file an objection to the proposed dismissal. The time for filing such an

objection has now passed and no objections have been filed. Accordingly, Mortensen may file an amended complaint removing the five defendants for whom he has indicated there are not sufficient facts to support claims. As set forth in the Court's prior Order, the amended complaint shall be filed by August 16, 2011.

Additionally, it is recommended that the District Court grant Defendant LandAmerica Transnation's Motion to Dismiss (Dkt. 60) pursuant to Federal Rule of Civile Procedure 12(b)(6) because Mortensen has not alleged sufficient facts to state a claim against Transnation and he has acknowledged that he does not have sufficient facts to support claims against Transnation (*see* Dkts. 73 & 88).

Moreover, Plaintiffs Steve Fritts and Brenda Burton have not signed any documents or filed anything in this action since they requested to be added as Plaintiffs in this case on September 20, 2010 (Dkt. 34), nor have they updated the Court with their current addresses. The Clerk of the Court sent notice to Fritts and Burton at all of their past addresses of record in this case advising them that if they did not file a notice advising the Court of their continued interest in remaining as Plaintiffs in this case, the Court would allow Mortensen to file an amended complaint on his own behalf, and they would be removed as Plaintiffs. The deadline for filing such notice has now passed without any notice from Fritts and Burton. Accordingly, the Court confirms its prior Order (Dkt. 102) allowing Mortensen to file an amended complaint that lists only him as a Plaintiff and recommends that the District Court enter an Order confirming that the claims made by Fritts and Burton are dismissed for failure to prosecute them or provide current addresses to the Court.

### **RECOMMENDATION**

IT IS THEREFORE RECOMMENDED that

1. The District Court grant Defendant LandAmerica Transnation's Motion to Dismiss (Dkt. 60) pursuant to Federal Rule of Civile Procedure 12(b)(6) because Plaintiff has not alleged sufficient facts to state a claim against Transnation.
2. The District Court dismiss the claims made by Plaintiffs Fritts and Burton for failure to prosecute them and failure to provide current addresses to the Court.



DATED: **August 10, 2011**

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Honorable Ronald E. Bush  
U. S. Magistrate Judge