

O
JS-6

1
2
3
4
5
6
7 **United States District Court**
8 **Central District of California**
9

10 ARLENE ROSENBLATT,
11 Plaintiff,

12 v.

13 CITY OF SANTA MONICA and THE
14 CITY COUNCIL OF SANTA MONICA,
15 Defendants.

Case No. 2:16-CV-04481-ODW-AGR

**ORDER GRANTING MOTION TO
DISMISS [68]**

16 **I. INTRODUCTION**

17 This litigation has been a long exercise in whittling down Plaintiff's claims, and
18 now, Defendants make their case for dismissing Plaintiff's remaining cause of action.
19 (ECF No. 68.) Plaintiffs have opposed Defendants' Motion to Dismiss (ECF Nos. 69),
20 and Defendants filed a Reply (ECF No. 71). For the reasons discussed below, the
21 Court **GRANTS** Defendants' Motion and dismisses what remains of Plaintiff's case.¹

22 **II. FACTUAL AND PROCEDURAL BACKGROUND**

23 This case is about the legality of the City of Santa Monica's adoption of a 2015
24 ordinance banning certain types of vacation rentals within the city. Santa Monica is a
25 popular tourist destination, and Plaintiff wishes to rent out her home as a vacation
26 rental to generate income. (See First Am. Compl. ("FAC") ¶¶ 55–56.) Since
27

28 ¹ After carefully considering the papers filed in support of and in opposition to the Motion, the Court
deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1 Defendants passed the Ordinance, she has not been able to do so. (*Id.* ¶ 56.) Plaintiff
2 also purports to represent a class of all residential property owners in the City of Santa
3 Monica, as they are likewise kept from renting their homes on sites like Airbnb,
4 VRBO, and HomeAway. (*See id.* ¶ 57.) The ordinance at issue bans “vacation
5 rentals” of residential property (leasing an entire property on a short-term basis) but
6 allows “home sharing” (renting a private room within a host’s home, with the host
7 present in other portions of the home during the stay). (*Id.* ¶¶ 15(a)–(b).)

8 Plaintiff filed her putative class action Complaint on June 21, 2016, and
9 Defendants first moved to dismiss on September 18, 2016. (ECF Nos. 1, 26.) The
10 Court granted Defendants’ first motion in its entirety. (ECF No. 51.) The Court
11 granted leave to amend, and Plaintiff filed a First Amended Complaint alleging four
12 causes of action: violation of the Dormant Commerce Clause of the United States
13 Constitution; declaratory relief; deprivation of constitutional rights under 42 U.S.C. §
14 1983; and violation of the California Coastal Act. (*See generally* FAC, ECF No. 52.)
15 The California Coastal Act claim was the only new cause of action as compared with
16 the original complaint. (*See* Compl., ECF No. 3; FAC.)

17 Following Plaintiff’s filing of her FAC, Defendants again moved to dismiss.
18 (ECF No. 56.) On March 30, 2017, the Court granted in part and denied in part
19 Defendants’ motion: it dismissed the constitutional causes of action but not the claim
20 for violation of the California Coastal Act. (ECF No. 67.) The Court found in its
21 Order that Plaintiff had adequately pleaded two separate bases for violations of the
22 Act. (Order 9–10.)

23 On the basis that Plaintiff’s complaint now contains only state law claims that
24 should not properly remain in federal court, Defendants request that the Court dismiss
25 the remaining cause of action.

26 **II. LEGAL STANDARD**

27 When a complaint in federal court includes both federal claims and state law
28 claims, and the federal claims are dismissed before trial, the district court has

1 discretion regarding whether to exercise supplemental jurisdiction over state law
2 claims or dismiss them in favor of state court. *Acri v. Varian Assocs., Inc.*, 114 F.3d
3 999, 1000 (9th Cir. 1997); *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 640
4 (2009). However, where other factors do not support the state law claims remaining
5 in federal court, the general preference is for the district court to dismiss those claims.
6 *Schneider v. TRW, Inc.*, 938 F.2d 986, 993 (9th Cir. 1991); *Wren v. Sletten Const. Co.*,
7 654 F.2d 529, 536 (9th Cir. 1981).

8 III. DISCUSSION

9 Plaintiff raises several points in opposing dismissal. First, Plaintiff argues that
10 Defendants' motion is an improper successive motion to dismiss, given that the Court
11 already ruled on a motion to dismiss the same operative complaint. (Opp'n 4.)
12 However, the Court agrees with Defendants that although Plaintiff has not filed a
13 second amended complaint, her complaint is constructively different from the one the
14 Court addressed in its last Order. (*See* Reply 2.) This is because new jurisdictional
15 issues arose when the Court dismissed all of Plaintiff's federal claims. Moreover,
16 Plaintiff fails to cite a rule stating that a Defendant cannot bring more than one motion
17 to dismiss on the same complaint. Plaintiffs cite Rule 12(g)(2), which actually states
18 that "a party must not make [a second] motion . . . raising a defense or objection that
19 *was available* to the party but omitted from its earlier motion" (emphasis added).
20 When Defendants submitted their first motion to dismiss this version of the complaint,
21 the Court had not yet dismissed the federal claims, and so arguments based on that
22 dismissal were not available at that time.

23 Second, Plaintiff cites several cases illustrating examples of district courts
24 retaining state law claims, including Coastal Act claims, after dismissing federal
25 causes of action. (Opp'n 4-5); *see, e.g., Headlands Reserve, LLC v. Ctr. for Nat.*
26 *Lands Mgmt.*, 523 F. Supp. 2d 1113, 1120 (C.D. Cal. 2007); *Spencer v. Lunada Bay*
27 *Boys*, No. CV 16-02129 SJO (RAOx), 2016 WL 6818757, at *6 (C.D. Cal. July 22,
28 2016). Plaintiff urges the Court to find similarly to the above-cited cases and keep

1 this case in federal court. While the Court agrees that it has the *discretion* to keep
2 Plaintiff's state law claims in federal court, it is simply not prudent to do so.
3 Defendants have not yet filed an Answer and discovery has not commenced. As such,
4 other than the case having been originally filed here, there do not appear to be any
5 factors supporting its retention in federal court given that only state law claims
6 remain. Plaintiff selects district court cases, some of which are unpublished, as
7 examples of courts exercising their discretion to keep purely state law cases, but she
8 cannot overcome the Supreme Court's overall rule that "if [] federal claims are
9 dismissed before trial . . . the state claims should be dismissed as well." *United Mine*
10 *Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966).

11 Last, Plaintiff argues that she could seek leave to amend in order to add new
12 federal claims to her complaint. (Opp'n 5.) True, but she has not done so in the
13 nearly two months since all of her federal claims were dismissed. The Court can only
14 rule on the complaint as it exists now, not as it could hypothetically exist in the future.

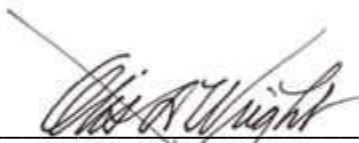
15 As a final matter, because the Court decides to dismiss the California Coastal
16 Act claim, it declines to reconsider its earlier decision on whether Plaintiff adequately
17 pleaded that claim. (*See* Mot. 1-2 (asking the Court alternatively to reconsider its
18 decision as to the Coastal Act).)

19 **VI. CONCLUSION**

20 For the reasons discussed above, the Court **GRANTS** Defendants' Motion to
21 Dismiss. (ECF No. 68.) Because each of Plaintiff's causes of action have now been
22 eliminated, the Clerk of Court shall close the case.

23 **IT IS SO ORDERED.**

24
25 May 24, 2017

26
27 

28

OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE