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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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YASMIN SMITH,

Plaintiff,

v.

Civ. No. S-09-607 FCD/KJM

MEMORANDUM AND ORDER

COUNTRYWIDE HOME LOANS, BANK  
OF AMERICA HOME LOANS,  
COUNTRYWIDE BANK, FSB,  
RECONTRUST COMPANY, MORTGAGE  
ELECTRONIC REGISTRATION  
SYSTEMS, INC., DEBRA DELGADO,  
and DOES 1-20 inclusive,

Defendants.

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This matter is before the court on the motion of defendants Countrywide Bank, NA, Countrywide Home Loans, Inc., Mortgage Electronic Registration Systems, Inc., BAC Home Loans Servicing, L.P., and Bank of America, N.A. to dismiss plaintiff Yasmin Smith's ("plaintiff") second amended complaint pursuant to Federal Rule of Civil Procedure ("FRCP") 12(b)(6). On February 23, 2010, plaintiff filed an opposition to defendants' motions to

1 dismiss, which included a statement of non-opposition to  
2 dismissal of plaintiff's claims under the Truth in Lending Act  
3 ("TILA") and the Real Estate Settlement Procedures Act  
4 ("RESPA").<sup>1</sup> (Pl.'s Opp'n Mot. Dismiss, filed Feb. 23, 2010,  
5 8:16-19, 12:8-11.) Accordingly, plaintiff's TILA and RESPA  
6 claims are dismissed. See, e.g. Fed. R. Civ. Pro. 41(a);  
7 Swedberg v. Marotzke, 339 F.3d 1139 (9th Cir. 2003) (defendant's  
8 filing of a motion to dismiss, pursuant to FRCP 12(b), does not  
9 prevent the plaintiff from later filing a voluntary dismissal).

10 Dismissal of the TILA and RESPA claims leaves the complaint  
11 devoid of any federal claims. The remaining claims are state law  
12 claims for negligence, violation of the California Rosenthal Act,  
13 breach of fiduciary duty, fraud, violation of California Business  
14 and Professions Code §§ 17200 *et seq.*, breach of contract, breach  
15 of the implied covenant of good faith and fair dealing, and  
16 wrongful foreclosure. (Pl.'s Second Am. Compl. ("Compl.").

17 Subject to the conditions set forth in 28 U.S.C. § 1367(c),  
18 district courts may decline to exercise supplemental jurisdiction  
19 over state law claims. See Acri v. Varian Associates, Inc., 114  
20 F.3d 999, 1000 (9th Cir. 1997)(en banc). The court's decision  
21 whether to exercise supplemental jurisdiction should be informed  
22 by values of "economy, convenience, fairness, and comity." Id.  
23 at 1001 (citations omitted). Further, primary responsibility for

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24  
25 <sup>1</sup> Under the heading "Plaintiff's First Cause of Action  
26 for Violation of TILA," plaintiff states that she does not oppose  
27 "Defendants' Motion to Dismiss the RESPA Cause of Action." Later,  
28 plaintiff uses the same language under the heading "Fourth Cause  
of Action for Violation of RESPA." The court interprets the  
first statement, as well as the lack of any argument relating to  
the TILA claim, as a non-opposition to defendants' motion to  
dismiss plaintiff's TILA claim.

1 developing and applying state law rests with the state courts.  
2 Therefore, when federal claims are eliminated before trial,  
3 district courts should usually decline to exercise supplemental  
4 jurisdiction. See Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343,  
5 350 (1988); Gini v. Las Vegas Metropolitan Police Dept., 40 F.3d  
6 1041, 1046 (9th Cir. 1994) ("[I]n the usual case in which  
7 federal-law claims are eliminated before trial, the balance of  
8 factors . . . will point toward declining to exercise  
9 jurisdiction over the remaining state law claims.") (quoting  
10 Schneider v. TRW Inc., 938 F.2d 986, 993 (9th Cir. 1991)). In  
11 accordance with 28 U.S.C. § 1367(c), the court declines to  
12 exercise supplemental jurisdiction over plaintiff's remaining  
13 state law claims.

14 Accordingly, plaintiff's complaint is DISMISSED without  
15 prejudice.

16 IT IS SO ORDERED.

17 DATED: March 2, 2010



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FRANK C. DAMRELL, JR.  
UNITED STATES DISTRICT JUDGE

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