

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KAREN GARDNER,

Plaintiff,

v.

AMERICAN HOME MORTGAGE SERVICING,
INC.; AMERICAN BROKERS CONDUIT;
DEUTSCHE BANK NATIONAL TRUST
COMPANY AS TRUSTEE FOR AMERICAN
HOME MORTGAGE ASSETS TRUST 2007-
MORTGAGE-BACKED PASS-THROUGH
CERTIFICATES, SERIES 2007-I; T.D.
SERVICE COMPANY; AHMSI DEFAULT
SERVICES, INC.; MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC.; CYPRESS MORTGAGE GROUP, INC.;
THEODORE L. FOWLER; STEVEN JAMES
SAMUELSON, and VELMA WILSON,

Defendants.

2:09-cv-0744-GEB-EFB

ORDER DECLINING SUPPLEMENTAL
JURISDICTION OVER PLAINTIFF'S
SECOND AMENDED COMPLAINT*

Defendant T.D. Service Company seeks to dismiss Plaintiff's second amended complaint under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction. Defendants American Home Mortgage Servicing, Inc. ("American Home") and AHMSI Default

* This matter is deemed to be suitable for decision without oral argument. E.D. Cal. R. 230(g).

1 Services ("AHMSI") also have filed a motion seeking to dismiss
2 Plaintiff's second amended complaint under Federal Rule of Civil
3 Procedure 12(b)(1), or alternatively, under Federal Rule of Civil
4 Procedure 12(b)(6). Plaintiff's second amended complaint alleges
5 eight claims under California law. Plaintiff filed a "Statement of
6 Non-Opposition" to each of the pending dismissal motions.

7 In her Statement of Non-Opposition to American Home and
8 AHMSI's dismissal motion, Plaintiff states:

9 [Plaintiff] does not oppose Defendants' Motion to
10 Dismiss Plaintiff's Second Amended Complaint due to
11 lack of subject matter jurisdiction. Plaintiff had
12 alleged causes of action of violations of both TILA
13 and RESPA in the First Amended Complaint.
14 Plaintiffs [sic] request the Court take notice that
15 their [sic] Second Amended Complaint, the operative
16 pleading, contains no federal causes of action.
17 The remaining causes of action are all state
18 claims. Therefore, this Court may decline to
19 exercise supplemental jurisdiction over state law
20 claims and choose to not consider Defendants'
21 arguments on the remaining state law claims
22 To avoid unnecessary usurpation of the Court's time
23 and resources, as well as those of the parties,
24 Plaintiffs [sic] have no objection to the Court's
25 dismissal without prejudice of this matter. The
26 Plaintiff respectfully requests that the Second
27 Amended Complaint be dismissed in its entirety
28 without prejudice.

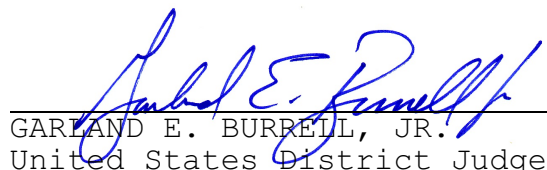
20 (Statement of Non-Opposition to American Home and AHMSI's Mot. to
21 Dismiss 1:25-2:15.)

22 Plaintiff's Statement of Non-Opposition appears to request
23 that the court decline to continue exercising supplemental
24 jurisdiction over Plaintiff's state claims under 28 U.S.C. §
25 1367(c)(3). Under 28 U.S.C. § 1367(c)(3), a district court "may
26 decline to exercise supplemental jurisdiction over a [state law]
27 claim" if "the district court has dismissed all claims over which it
28 has original jurisdiction" The decision to decline

1 supplemental jurisdiction under 28 U.S.C. § 1367(c)(3) should be
2 informed by the values of economy, convenience, fairness and comity as
3 delineated by the Supreme Court in United Mine Workers of Am. v.
4 Gibbs, 383 U.S. 715, 726 (1996). Acri v. Varian Associates, Inc.,
5 114 F.3d 999, 1001 (9th Cir. 1997) (en banc).

6 Since state courts have the primary responsibility for
7 developing and applying state law, the Gibbs values do not favor
8 retyaining jurisdiction in this case. See Acri, 114 F.3d at 1001
9 (stating that "in the usual case in which all federal-law claims are
10 eliminated before trial, the balance of factors will point towards
11 declining to exercise jurisdiction over the remaining state-law
12 claims" (quotations and citation omitted)); Curiel v. Barclays Capital
13 Real Estate Inc., No. S-09-3074 FCD/KJM, 2010 WL 729499, at *1 (E.D.
14 Cal. Mar. 2, 2010) (stating "primary responsibility for developing and
15 applying state law rests with the state courts" and declining to
16 exercise supplemental jurisdiction after dismissal of the federal
17 claims); Anderson v. Countrywide Fin., No. 2:08-cv-01220-GEB-GGH, 2009
18 WL 3368444, at *5 (E.D. Cal. Oct. 19, 2009) (finding that "the Gibbs
19 values do not favor continued exercise of supplemental jurisdiction"
20 once all federal claims have been resolved). Therefore, the court
21 declines to continue exercising supplemental jurisdiction over the
22 state law claims alleged in Plaintiff's second amended complaint and
23 Plaintiff's state claims are dismissed without prejudice.
24 Accordingly, this case shall be closed.

25 Dated: April 6, 2010

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28 GARLAND E. BURRELL, JR.
United States District Judge