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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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GARY T. WONG and MARIA WONG

NO. 2:09-CV-01506 FCD/DAD

Plaintiffs,

v.

MEMORANDUM AND ORDER

AMERICAN SERVICING COMPANY,  
INC., LITTON LOAN SERVICING,  
MERIDIAS CAPITAL, INC., FIRST  
AMERICAN LOANSTAR TRUSTEE  
SERVICES, MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.,  
MERIDIAS CAPITAL INC. WILLIAM  
A. ARRIOLA, BRENT HICKS and  
DOES 1-20 inclusive,

Defendants.

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This matter is before the court on the motions of Meridias Capital, Inc. ("Meridias"), Brent Hicks ("Hicks"), American Servicing Company, Inc. ("American Servicing"), Mortgage Electronic Registration Systems, Inc. ("MERS"), and First American Loanstar Trustee Services ("Loanstar") to dismiss plaintiffs' Third Amended Complaint ("TAC") pursuant to Federal

1 Rule of Civil Procedure ("FRCP") 12(b)(6). On March 23, 2010,  
2 plaintiffs Gary T. Wong and Maria Wong (collectively,  
3 "plaintiffs") filed plaintiff filed a statement of non-  
4 opposition, requesting that their claims for violations of the  
5 Truth in Lending Act ("TILA") and the Real Estate Settlement  
6 Procedures Act ("RESPA") against the moving defendants be  
7 dismissed without prejudice. (Docket #s 60-2, 60-3, 61-2, 61-3.)  
8 On April 8, 2010, plaintiffs filed a notice of voluntary  
9 dismissal of the TILA and RESPA claims against defendant Dyck  
10 O'Neal, Inc., who had not yet been served. (Docket #68.)

11 Based on plaintiffs' filings, the court dismisses the RESPA  
12 and TILA claims asserted in the TAC. See, e.g. Fed. R. Civ. P.  
13 41(a); Swedberg v. Marotzke, 339 F.3d 1139 (9th Cir. 2003) (a  
14 defendant's filing of a motion to dismiss, pursuant to Rule  
15 12(b), does not prevent the plaintiffs from later filing a  
16 voluntary dismissal).

17 Dismissal of the RESPA and TILA claims leaves the complaint  
18 devoid of any federal claims. The remaining claims are state law  
19 claims for violation of the California Rosenthal Act, negligence,  
20 breach of fiduciary duty, fraud, violation of California Business  
21 and Professions Code § 17200 et seq., breach of contract, breach  
22 of the implied covenant of good faith and fair dealing, and  
23 wrongful foreclosure.

24 Subject to the conditions set forth in 28 U.S.C. § 1367(c),  
25 district courts may decline to exercise supplemental jurisdiction  
26 over state law claims. See Acri v. Varian Assoc., Inc., 114 F.3d  
27 999, 1000 (9th Cir. 1997) (en banc). The court's decision  
28 whether to exercise supplemental jurisdiction should be informed

1 by values of "economy, convenience, fairness, and comity." Id.  
2 at 1001 (citations omitted). Further, primary responsibility for  
3 developing and applying state law rests with the state courts.  
4 Therefore, when federal claims are eliminated before trial,  
5 district courts should usually decline to exercise supplemental  
6 jurisdiction. See Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343,  
7 350 (1988); Gini v. Las Vegas Metropolitan Police Dept., 40 F.3d  
8 1041, 1046 (9th Cir. 1994) ("In the usual case in which federal-  
9 law claims are eliminated before trial, the balance of factors  
10 . . . will point toward declining to exercise jurisdiction over  
11 the remaining state law claims.") (quoting Schneider v. TRW Inc.,  
12 938 F.2d 986, 993 (9th Cir. 1991)). In accordance with Section  
13 1367(c), the court declines to exercise supplemental jurisdiction  
14 over plaintiffs' remaining state law claims.

15 Plaintiffs' complaint is therefore DISMISSED without  
16 prejudice.

17 IT IS SO ORDERED.

18 DATED: May 7, 2010

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21 FRANK C. DAMRELL, JR.  
22 UNITED STATES DISTRICT JUDGE  
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