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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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DELICIA MASON,

Plaintiff,

v.

Civ. No. S-09-1836 FCD/DAD

MEMORANDUM AND ORDER

INDYMAC FEDERAL BANK;  
MORTGAGEIT, INC; NDEX WEST,  
LLC; MORTGAGE ELECTRONIC  
SYSTEMS, INC.; US BANK  
NATIONAL ASSOCIATION; MD  
MORTGAGE GROUP, INC.; JAMES  
DEVERA; KEVIN RUSCH; and DOES  
1-20 inclusive,

Defendants.

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This matter is before the court on the motion of defendants' Mortgageit, Inc. ("Mortgageit") and Mortgage Electronic Registration Systems ("MERS") motion to dismiss plaintiff Delicia Mason's ("plaintiff") second amended complaint pursuant to Federal Rule of Civil Procedure ("FRCP") 12(b)(6). On February 26, 2010, plaintiff filed an amended opposition to defendants'

1 motions to dismiss, which included a request for leave to amend  
2 her first amended complaint. In this request, plaintiff seeks to  
3 remove her claims under the Truth in Lending Act ("TILA") and the  
4 Real Estate Settlement Procedures Act ("RESPA") stating she is  
5 unable to obtain facts to support these claims. (Pl.'s Am. Opp'n  
6 Mot. Dismiss, filed Feb. 26, 2010, 16:2-19.) The court  
7 interprets this as a request for dismissal of the TILA and RESPA  
8 claims. Accordingly, plaintiff's TILA and RESPA claims are  
9 dismissed. See, e.g. Fed. R. Civ. Pro. 41(a); Swedberg v.  
10 Marotzke, 339 F.3d 1139 (9th Cir. 2003) (defendant's filing of a  
11 motion to dismiss, pursuant to FRCP 12(b), does not prevent the  
12 plaintiff from later filing a voluntary dismissal).

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

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

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

12 Accordingly, plaintiff's complaint is DISMISSED without  
13 prejudice.

14 IT IS SO ORDERED.

15 DATED: March 2, 2010



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FRANK C. DAMRELL, JR.  
UNITED STATES DISTRICT JUDGE

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