

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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VICTOR M. ABARCA and MARIA G.
ALVARADO,

NO. 2:10-cv-107 WBS DAD

Plaintiffs,

MEMORANDUM AND ORDER RE:
MOTIONS TO DISMISS

v.

AMERICAN HOME MORTGAGE
SERVICING, INC.; AMERICAN HOME
MORTGAGE ACCEPTANCE, INC.;
POPE MORTGAGE & ASSOCIATES,
INC.; PAUL N. POPE; and
MESHAWN DAVIS,

Defendants.

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Plaintiffs Victor M. Abarca and Maria G. Alvarado filed this action against defendants American Home Mortgage Servicing, Inc. ("AHMSI"), American Home Mortgage Acceptance, Inc., Pope Mortgage & Associates, Inc., Paul N. Pope, and Meshawn Davis, alleging eight state and federal claims relating to a loan they obtained to refinance their home in Yuba City. (Docket No. 1.)

1 Plaintiffs asserted that the basis of the court's jurisdiction
2 over the action was federal question jurisdiction, predicated on
3 their claims for violations of the Truth In Lending Act ("TILA"),
4 15 U.S.C. §§ 1601-1667f, and the Real Estate Settlement
5 Procedures Act ("RESPA"), 12 U.S.C. §§ 2601-2617.

6 Soon after receiving plaintiffs' original Complaint,
7 defendant AHMSI filed a motion to dismiss. (Docket No. 7.)
8 Plaintiffs then filed a First Amended Complaint ("FAC") that no
9 longer alleged any federal causes of action. (Docket No. 10.)
10 Concurrently, plaintiffs filed a statement of non-opposition to
11 AHMSI's motion to dismiss admitting a lack of subject matter
12 jurisdiction and requesting dismissal without prejudice or, in
13 the alternative, leave to amend. (Docket No. 9.) AHMSI in
14 response filed a motion to dismiss plaintiffs's FAC. (Docket No.
15 11.) Plaintiffs do not oppose the motion (Docket No. 17.) and
16 have filed their own motion to dismiss without prejudice for lack
17 of subject matter jurisdiction. (Docket No. 16.) AHMSI opposes
18 plaintiffs' motion to dismiss as moot in light of its own motion
19 to dismiss currently pending, and requests that plaintiffs' FAC
20 be dismissed with prejudice. (Docket No. 19.) Should the court
21 decline to exercise supplemental jurisdiction over the state law
22 claims, AHMSI requests that those claims be dismissed without
23 prejudice. (Id.)

24 Under 28 U.S.C. § 1367(c)(3), a district court may
25 decline to exercise supplemental jurisdiction over a state law
26 claim if "the district court has dismissed all claims over which
27 it has original jurisdiction" 28 U.S.C. § 1367(c)(3);
28 see also Acri v. Varian Assocs., Inc., 114 F.3d 999, 1000 (9th

1 Cir. 1997) ("[A] federal district court with power to hear state
2 law claims has discretion to keep, or decline to keep, them under
3 the conditions set out in § 1367(c)."). Factors for a court to
4 consider in deciding whether to dismiss supplemental state claims
5 include judicial economy, convenience, fairness, and comity.
6 Imagineering, Inc. v. Kiewit Pac. Co., 976 F.2d 1303, 1309 (9th
7 Cir. 1992). "[I]n the usual case in which federal law claims are
8 eliminated before trial, the balance of factors . . . will point
9 toward declining to exercise jurisdiction over the remaining
10 state law claims." Reynolds v. County of San Diego, 84 F.3d
11 1162, 1171 (9th Cir. 1996) overruled on other grounds by Acri,
12 114 F.3d at 1000.

13 Since plaintiffs have abandoned their federal claims
14 and none of the parties have posed any extraordinary or unusual
15 circumstances that would counsel against dismissal, the court
16 will decline to exercise supplemental jurisdiction under §
17 1367(c)(3) as to the FAC's state law claims.

18 IT IS THEREFORE ORDERED that plaintiffs' First Amended
19 Complaint be, and the same hereby is, DISMISSED without
20 prejudice.¹

21 DATED: June 17, 2010

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24 WILLIAM B. SHUBB
25 UNITED STATES DISTRICT JUDGE
26

27 _____
28 ¹ AHMSI's and plaintiffs' motions to dismiss are
therefore moot.