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

JOHN BROSNAN,

No. C 08-4049 SI

Plaintiff,

**ORDER GRANTING UNOPPOSED  
MOTION TO SET ASIDE DEFAULT  
AGAINST CARRINGTON MORTGAGE  
SERVICES LLC; GRANTING  
PLAINTIFF'S REQUEST TO  
WITHDRAW MOTION TO VACATE  
ORDER; DISMISSING WITHOUT  
PREJUDICE STATE LAW CLAIMS  
AGAINST CARRINGTON MORTGAGE  
SERVICES FOR REASONS SET FORTH  
IN FEBRUARY 2, 2009 ORDER**

v.

DEUTSCHE BANK NATIONAL TRUST CO.,  
*et al.*,

Defendants.

United States District Court  
For the Northern District of California

Plaintiff's motion to vacate the February 2, 2009 order, and defendant Carrington Mortgage Services LLC's motion to set aside default are scheduled for a hearing on April 3, 2009. Pursuant to Civil Local Rule 7-1(b), the Court determines that the matters are appropriate for resolution without oral argument, and VACATES the hearing.

**I. Plaintiff's motion to vacate**

By order filed February 2, 2009, the Court declined to exercise supplemental jurisdiction over numerous state law claims alleged in the complaint, and dismissed those claims without prejudice. As a result of that order, the only claim that remains is plaintiff's first cause of action for illegal wiretapping in violation of 18 U.S.C. § 2511, alleged against defendants Deutsche Bank, Winders and Carrington Mortgage Services, LLC ("CMS").

On February 18, 2009, plaintiff filed a motion to vacate the February 2, 2009 order, and sought leave to amend the complaint to allege state law claims based on diversity jurisdiction. (Docket No. 40).

1 Plaintiff now seeks to withdraw that motion because it appears that there is no diversity jurisdiction.  
2 The Court GRANTS plaintiff's request to withdraw, and deems the motion to vacate withdrawn.  
3 (Docket Nos. 40, 51).  
4

5 **II. CMS' motion to set aside default**

6 Default was entered against CMS on December 18, 2008. On January 30, 2009, CMS filed a  
7 motion to set aside the default on the ground of excusable neglect of counsel. CMS asserts that its  
8 attorney miscalendared the date for filing a response to plaintiff's complaint. Plaintiff has not opposed  
9 CMS's motion.

10 The Court finds that CMS has established good cause to set aside the default, and GRANTS  
11 defendant's motion. (Docket No. 36). For the reasons set forth in the February 2, 2009 order, the Court  
12 declines to exercise supplemental jurisdiction over any state law claims alleged against CMS, and thus  
13 the only claim that is proceeding is plaintiff's claim for illegal wiretapping against Deutsche Bank,  
14 Winders and CMS. CMS shall file its answer to the complaint no later than **April 3, 2009**.

15  
16 **CONCLUSION**

17 For the foregoing reasons, the Court GRANTS plaintiff's request to withdraw the motion to  
18 vacate and deems that motion withdrawn, and GRANTS defendant CMS's motion to set aside the entry  
19 of default.

20 **The Court shall hold a case management conference with the remaining parties on May**  
21 **1, 2009 at 2:30 pm.**

22  
23 **IT IS SO ORDERED.**

24  
25 Dated: March 30, 2009

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SUSAN ILLSTON  
28 United States District Judge