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

10 JUDITH COLVIN, No. C 09-00238 CW  
11 Plaintiff,  
12 v.  
13 CITIGROUP GLOBAL MARKETS, INC.,  
14 Defendant.  
15 \_\_\_\_\_/  
16  
17 ORDER DENYING IN  
18 PART PLAINTIFF'S  
MOTION TO (1)  
WITHDRAW AS  
REPRESENTATIVE  
PLAINTIFF, (2)  
DISMISS PLAINTIFF'S  
INDIVIDUAL CLAIMS  
WITHOUT PREJUDICE  
and (3) CONDUCT  
DISCOVERY TO  
IDENTIFY A  
SUBSTITUTE CLASS  
REPRESENTATIVE

19 On April 28, 2009, the Court conducted an initial case  
20 management conference for the present case. At the conference, the  
21 Court noted Plaintiff Judith Colvin's involvement in a related  
22 case, Bahramipour v. Citigroup Global Markets Inc., No. C 04-04440  
23 CW, and indicated that it would initially limit discovery to  
24 Plaintiff's individual claims and permit the parties to file  
25 motions for summary judgment on those claims prior to proceeding  
26 with pre-class-certification discovery. Specifically, the Court  
27 allowed 120 days for the parties to conduct discovery. On May 12,  
28 2009, Plaintiff moved to vacate the case management order, arguing

1 that the order improperly allowed a merits determination prior to  
2 class certification. On June 11, 2009, the Court denied  
3 Plaintiff's motion because district courts may rule on the merits  
4 of a case before ruling on a motion for class certification.  
5 Wright v. Schock, 742 F.2d 541, 544 (9th Cir. 1984).

6 On June 23, 2009, the parties' filed a joint statement  
7 outlining a summary judgment briefing schedule. On September 16,  
8 eight days before Defendant Citigroup Global Markets, Inc.'s (CGMI)  
9 motion for summary judgment was due, Plaintiff filed the present  
10 motion to (1) Withdraw as Representative Plaintiff, (2) Dismiss  
11 Plaintiff's Individual Claims Without Prejudice and (3) Conduct  
12 Discovery to Identify a Substitute Class Representative. Plaintiff  
13 also filed a motion to shorten time under which the Court will  
14 determine her underlying motion. The Court granted Plaintiff's  
15 motion to shorten time and it vacated the summary judgment briefing  
16 schedule. The Court now addresses Plaintiff's underlying motion.

17 Plaintiff requests leave to withdraw as the representative  
18 plaintiff in this case "because she no longer wishes to serve in  
19 that capacity." Motion at 3. Plaintiff offers no further  
20 explanation. Although leave to add or subtract named plaintiffs  
21 after class certification is routinely granted, doing so prior to  
22 class certification is a different situation. After a class is  
23 certified, "'a class acquires a legal status separate from that of  
24 the named plaintiffs,' such that the named plaintiff's loss of  
25 standing does 'not necessarily call for the simultaneous dismissal  
26 of the class action, if members of that class might still have  
27 claims.'" Velazquez v. GMAC Morq. Corp., 2009 WL 2959838 (C.D.  
28 Cal.) quoting Birmingham Steel Corp. v. Tennessee Valley Authority,

1 353 F.3d 1331, 1336 (11th Cir. 2003). Because no class has been  
2 certified in this action, Plaintiff's loss of standing would  
3 require simultaneous dismissal.

4 Here, Defendant CGMI has already conducted discovery geared  
5 towards Plaintiff. This time will be entirely wasted if Plaintiff  
6 is allowed to withdraw and substitute a new class representative.  
7 Moreover, Plaintiff does not even have a substitute available and,  
8 in this motion, she seeks discovery to locate one. At the initial  
9 case management conference, the Court gave the parties 120 days to  
10 conduct discovery for the express purpose of allowing them to file  
11 motions for summary judgment prior to proceeding with pre-class-  
12 certification discovery. Thus, the discovery allowed to date was  
13 not for the purpose of locating an adequate class representative.  
14 However, Plaintiff appears to be asking for just that. The Court  
15 will not permit additional discovery to substitute a new class  
16 representative.

17 The Court will allow Plaintiff to withdraw from the case, but  
18 with her absence, the case is left without a plaintiff and will be  
19 dismissed. Plaintiff shall notify the Court within three days from  
20 the date of this order whether she wishes to proceed with this  
21 action, either on an individual basis or as a class representative.  
22 If she does not, Plaintiff's claims will be dismissed with  
23 prejudice. If she chooses to go forward with the action,  
24 Defendant's motion for summary judgment will be due October 22;  
25 Plaintiff's opposition and cross motion for summary judgment will  
26 be due November 5; Defendant's reply and opposition to the cross  
27 motion will be due November 19; and Plaintiff's reply will be due  
28 December 3. The summary judgment motions will be heard on

1 December 17.

2 IT IS SO ORDERED.

3 Dated: 10/13/09



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CLAUDIA WILKEN  
United States District Judge

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