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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KATHERINE MCGRUE, et al.,

Plaintiffs,

No. C 10-1251 PJH

v.

ORDER OF DISMISSALAMERICAN BROKERS CONDUIT,
et al.,

Defendants.

Pro se plaintiffs Katherine Desiree McGrue and Azina Gunsey Cooper filed the above entitled action on March 25, 2010, against defendants American Brokers Conduit (“ABC”), American Home Mortgage Servicing, Inc. (“AHMSI”), National City Mortgage (“National City”), Green Tree Servicing LLC (“Green Tree”), T.D. Servicing Company (“T.D. Servicing”), and Power Default Services Inc. (“Power Default”). Also on March 25, 2010, plaintiffs requested (and obtained) issuance of a summons for only three of the six named defendants – AHMSI, Green Tree, and T.D. Servicing.

On April 1, 2010, plaintiffs filed a first amended complaint (“FAC”), and requested (and obtained) issuance of “amended summons” for the same three defendants. No summons was ever issued for defendants ABC, National City, or Power Default.

On April 20, 2010, T.D. Servicing filed a motion to dismiss the FAC. On April 23, 2010, AHMSI and Power Default filed a motion to dismiss the FAC. On April 28, 2010, Green Tree filed a motion to dismiss the FAC. All three motions were noticed for hearing on June 2, 2010. Under Civil Local Rule 7-3, plaintiffs’ opposition to the motions was due

1 on May 12, 2010. However, no opposition was filed.

2 On May 27, 2010, plaintiffs submitted a letter to the court, stating that they had
3 “withdrawn the case and the loan with American Home Mortgage Servicing Inc, as well as,
4 the loan with Green Tree Servicing LLC have been paid in full” and that they were
5 “submitting this letter as explanation as to why we will not be present for the hearing on
6 June 2, 2010 department 3 at 9:00 a.m.” Also on May 27, 2010, plaintiffs filed a document
7 entitled “Motion to Withdraw,” stating that they were seeking an order “authorizing our
8 withdrawal.” They stated further that they were “filing a motion to withdraw the case with
9 out prejudice for the following: We are withdrawing the civil action filed because we paid off
10 the loan balance.”

11 Plaintiffs did not appear at the June 2, 2010 hearing on the motions to dismiss. At
12 the hearing, the court inquired of defendants’ counsel whether they had any information
13 supporting plaintiffs’ assertion that they had “paid off the loan balance,” and counsel
14 indicated that they did not.

15 On June 4, 2010, the court issued an order granting the motions. The order stated
16 that plaintiffs would be allowed 30 days to file a second amended complaint, and that if no
17 amended complaint was filed by that deadline, the entire action would be dismissed with
18 prejudice. As of July 9, 2010, no amended complaint has been filed.

19 Accordingly, in view of plaintiffs’ failure to file an opposition to the motions to
20 dismiss, their subsequent “withdrawal,” and their failure to file a second amended
21 complaint, the claims against defendants AHMSI, Green Tree, T.D. Servicing, and Power
22 Default are **DISMISSED WITH PREJUDICE**. The claims against ABC and National City
23 are **DISMISSED WITHOUT PREJUDICE**.

24

25 **IT IS SO ORDERED.**

26 Dated: July 9, 2010

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PHYLLIS J. HAMILTON
United States District Judge