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28UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KATHERINE MCGRUE, et al.,

Plaintiffs,

v.

AMERICAN BROKERS CONDUIT, et al.,

Defendants.

No. C 10-1251 PJH

**ORDER**

Plaintiffs filed the above-entitled action on March 25, 2010, against defendants ABC, AHMSI, National City Mortgage, Green Tree Servicing, LLC ("Green Tree"), T.D. Servicing Company ("T.D. Service"), and Power Default Services Incorporated ("Power Default"), seeking to halt the foreclosure sale of their property located in San Lorenzo, California. On April 1, 2010, plaintiffs filed a first amended complaint ("FAC"), asserting four causes of action against the same defendants as in the original complaint – a claim of quiet title, a claim of slander of title and fraudulent inducement, a claim of fraudulent concealment, and a claim of negligent misrepresentation.

Plaintiffs apparently served only defendants AHMSI, T.D. Service, Power Default, and Green Tree. Those four defendants filed motions to dismiss. The motions were noticed for hearing on June 2, 2010. Plaintiffs did not file an opposition to the motions by

1 the date set by the Civil Local Rules of this court. On May 19, 2010, T.D. Service filed a  
2 notice of plaintiffs' non-opposition to the motions.

3 On May 27, 2010, plaintiffs submitted a letter to the court, in which they stated that  
4 they had "withdrawn the case and the loan with American Home Mortgage Servicing, Inc.,  
5 as well as the loan with Green Tree Servicing LLC have been paid in full." They added that  
6 they were "submitting this letter as explanation as to why we will not be present for the  
7 hearing on June 2, 2010 . . . ." Also on May 27, 2010, plaintiffs filed a "Motion to  
8 Withdraw," in which they stated that they were moving for entry of order "authorizing our  
9 withdrawal" of the case without prejudice. The stated reason for the "withdrawal" was that  
10 "we have paid off the loan balance."

11 On June 2, 2010, the court heard defendants' arguments in the motions to dismiss,  
12 and granted the motions. On June 4, 2010, the court issued an order dismissing the claim  
13 of quiet title and the claim of slander of title with prejudice, and dismissing the fraud claims  
14 with leave to amend to allege fraud with particularity. The order stated that the deadline for  
15 filing any amended complaint was "30 days from the date this order is signed." The order  
16 did not grant leave to add new claims or new defendants.

17 On July 7, 2010, the court dismissed the entire action with prejudice, as plaintiffs had  
18 not filed an amended complaint by the deadline set by the June 4, 2010 order. Judgment  
19 was also entered as of that date.

20 That same day, after the judgment was entered, plaintiffs filed a second amended  
21 complaint ("SAC"), against ABC, AHMSI, Power Default, and T.D. Servicing, and also  
22 adding two new defendants – Deutsche Bank and Mortgage Electronic Registration System  
23 ("MERS") (although no summons was issued for the two new defendants). The SAC also  
24 alleges 12 causes of action, five of which appear to be variants of fraud claims, and the  
25 other seven of which are entirely new claims.

26 As judgment was entered before plaintiffs filed the SAC, the SAC is of no effect. If  
27 plaintiffs intended by filing the SAC that they wished to continue with the case  
28 (notwithstanding their "Motion to Withdraw"), then they must make a request to vacate the

1 judgment in accordance with Federal Rule of Civil Procedure 60(b). Moreover, even if the  
2 court were to grant a request to vacate the judgment, it would not permit the case to  
3 proceed under the SAC absent a request for leave of court to add new defendants or new  
4 claims.

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6 **IT IS SO ORDERED.**

7 Dated: August 2, 2010

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PHYLLIS J. HAMILTON  
United States District Judge

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