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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CJ INVESTMENT SERVICES, INC., et. al.,      CASE NO. 5:12-cv-00866 EJD

Plaintiff(s),

v.

MICHAEL D. WILLIAMS, et. al.,

Defendant(s).

**ORDER GRANTING PLAINTIFFS'  
MOTION TO DISMISS; REMANDING  
CASE**

[Docket Item No(s). 8]

**I. INTRODUCTION**

Presently before the court is Plaintiffs'<sup>1</sup> Motion to Dismiss (the "Motion") their claims against Defendant United States of America (the "Government") without prejudice. See Docket Item No. 8. Defendants have not filed an opposition to this motion, and the time for filing an opposition has passed.

The court has reviewed this matter and finds it appropriate for decision without oral argument pursuant to Civil Local Rule 7-1(b). The hearing scheduled for September 14, 2012, will therefore be vacated and Plaintiffs' motion will be granted. Because that decision leaves this court

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<sup>1</sup> In addition to CJ Investment Services, Inc., the additional moving plaintiffs are David A. Gray, Richard M. Oderio, Calvin B. Cornwell, Carla J. Cornwell, Ignatius Palermo, Trustee of the Palermo Living Trust u/t/d February 6, 1995, Wiley Austin Smith and Marilyn Joan Smith, as Trustees for the Smith Living Trust u/t/d April 22, 1992, Dianna Sue Stickney, Trustee of the Stickney Living Trust u/t/d August 31, 2000, Craig R. Dulis and Gloria J. Dulis, Trustees of the Craig R. Dulis and Gloria J. Dulis Revocable Living Trust u/t/d March 29, 1995, Mark A. Parelius, Trustee of the M. Ronald Parelius Irrevocable Life Insurance Trust u/t/d September 16, 1999, and Kaleen Abel, Trustee of the Abel Family Trust B.

1 without subject matter jurisdiction, this action will be remanded to the state court from which it  
2 originated.

## 3 II. BACKGROUND

4 The court recounts the relevant factual and procedural background as it has previously. This  
5 action arose out of a loan Plaintiffs made to Defendant Michael Williams (“Williams”) secured by  
6 real property located at 3005 Duval Court, Gilroy, California (the “Property”). Williams defaulted  
7 on the deed of trust, and Plaintiffs moved to foreclose on the Property. In doing so, however,  
8 Plaintiffs discovered several other obligations, liens, and judgments against the Property, including a  
9 tax lien held by the Government.

10 On July 12, 2007, Plaintiffs filed an action against the various entities and individuals  
11 claiming an interest in the Property, including Williams. After Plaintiffs filed an amended  
12 complaint, the Government removed the action to this court. See Docket Item No. 1, Case No. 5:08-  
13 cv-05550 EJD.

14 Nearly three years after Plaintiffs commenced the action in state court, the Government filed  
15 a Notice of Disclaimer disclaiming any interest in the Property. See Docket No. 33. This  
16 eventually resulted in a stipulation for entry of judgment between Plaintiffs and all lienholder  
17 defendants except one, wherein the parties agreed that all liens would be subordinate to Plaintiffs’  
18 loan (the “Subordination Agreement”). See Docket No. 42, Case No. 5:08-cv-05550 EJD.

19 Plaintiffs eventually moved to sever the first and second causes of action for quiet title and  
20 declaratory relief and moved for summary judgment on those claims. On November 24, 2010, this  
21 court’s predecessor granted the motion for summary judgment as to the first and second causes of  
22 action and held that the Subordination Agreement was a valid agreement, entitling Plaintiffs’ lien to  
23 first priority over all others. See Docket Item No 55, Case No. 5:08-cv-05550 EJD. The court  
24 ordered Plaintiffs to submit a proposed judgment.

25 Plaintiffs submitted the proposed judgment to the court on December 10, 2010. See Docket  
26 Item No. 56, Case No. 5:08-cv-05550 EJD . The court declined to enter it, however, because of its  
27 perception that it exceeded the scope of the summary judgment order. See Docket Item No. 58,  
28 Case No. 5:08-cv-05550 EJD. Plaintiffs submitted a new judgment on February 28, 2011. See

1 Docket Item No. 59, Case No. 5:08-cv-05550 EJD. The case was then reassigned to the undersigned  
2 on April 25, 2011. See Docket Item No. 60, Case No. 5:08-cv-05550 EJD.

3 On October 27, 2011, Plaintiffs renewed their motion to sever the first and second causes of  
4 action from the remainder of the amended complaint. This court granted the motion, ordered the  
5 claims severed, and ordered the clerk to open the instant case for the remaining claims, all of which  
6 arise under state law.<sup>2</sup> See Docket Item No. 73, Case No. 5:08-cv-05550 EJD.

7 Judgment was entered on the first and second causes of action on March 19, 2012. See  
8 Docket Item No. 76, Case No. 5:08-cv-05550 EJD. Plaintiffs now move to dismiss the Government  
9 from the seventh and eighth causes of action. See Docket Item No. 8, Case No. 5:12-cv-00866 EJD.

### 10 III. DISCUSSION

11 Federal Rule of Civil Procedure 41(a)(2) allows a plaintiff, pursuant to an order of the court,  
12 and subject to any terms and conditions the court deems proper, to dismiss an action without  
13 prejudice at any time. When ruling on a motion to dismiss without prejudice, the district court must  
14 determine whether the defendant will suffer some plain legal prejudice as a result of the dismissal.  
15 Hyde & Drath v. Baker, 24 F.3d 1162, 1169 (9th Cir. 1994); Hamilton v. Firestone Tire & Rubber  
16 Co., 679 F.2d 143, 145 (9th Cir. 1982).

17 Here, the court cannot find any prejudice to the Government in dismissing it from the two  
18 remaining causes of action to which it is a party. As explained above, the Government disclaimed  
19 any interest in the Property at issue and the court found such disclaimer valid in the order granting  
20 summary judgment. Accordingly, the Government has no further interest in the remaining causes of  
21 action and should therefore be dismissed without prejudice.

22 The court recognizes that the decision to dismiss the Government leaves the court without a  
23 basis for subject matter jurisdiction over the remaining state-law claims. Furthermore, the court  
24 finds it appropriate to decline supplemental jurisdiction because, at this point, issues of state law  
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26 <sup>2</sup> It appears the Order granting the Motion to Sever contains an error in the instruction for the  
27 clerk to assign a new case number to the first and second causes of action. In actuality, the first and  
28 second causes of action remained under the original case number, 5:08-cv-05550 EJD, and the  
remainder of the action was assigned case number 5:12-cv-00866 EJD. The judgment entered in  
case number 5:08-cv-05550 EJD resolved the first and second causes of action.

1 “substantially predominate.” 28 U.S.C. § 1367(c). An order remanding this action will be entered  
2 as a result.

3 **IV. ORDER**

4 Based on the foregoing, Plaintiffs’ Motion to Dismiss (Docket Item No. 8) is GRANTED.  
5 The seventh and eighth causes of action are DISMISSED WITHOUT PREJUDICE insofar as those  
6 claims are asserted against the Government.

7 The balance of this action is REMANDED to Santa Clara County Superior Court for further  
8 proceedings.<sup>3</sup> The clerk shall close this file.

9 **IT IS SO ORDERED.**

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11 Dated: August 31, 2012

  
EDWARD J. DAVILA  
United States District Judge

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27 <sup>3</sup> Considering the somewhat complicated procedural circumstances, it is worth noting here  
28 for the sake of clarity that this case is merely an offshoot of the case originally removed from Santa  
Clara County Superior Court (5:08-cv-05550 EJD). The original state court case number was  
107CV089734.