



1 without oral argument. *See* CivLR 7.1(d.1); Doc. # 19.

2 After a thorough review of the pleadings submitted by the parties, this Court, on  
3 August 6, 2010, found that it was not sufficiently clear from the record whether plaintiff  
4 Carol Robinson wished to join in her co-plaintiff's motion to dismiss or motion to remand  
5 or whether plaintiffs jointly wished to dismiss all federal claims presented in the  
6 complaint.<sup>1</sup> Thus, this Court directed plaintiffs to clarify those issues in a supplemental  
7 pleading and provided defendants with the opportunity to respond to plaintiffs'  
8 supplemental pleading. *See* Doc. # 25 at 2.

9 Plaintiffs filed their supplemental brief on August 16, 2010, indicating that both  
10 plaintiffs jointly move to dismiss (and therefore abandon) all federal claims and seek to  
11 remand the remaining claims back to the state court for all further proceedings. *See* Docs.  
12 # 27, 28. No response to the supplemental pleading was filed by any party. There being  
13 no opposition<sup>2</sup> to plaintiffs' request to voluntarily dismiss their federal claims, this Court  
14 finds no reason to deny the request, thereby leaving only plaintiffs' state law claims intact.

15 As to plaintiffs' motion to remand, this Court has the discretion to decline or to  
16 continue to exercise supplemental jurisdiction over state law claims after federal claims  
17 have been dismissed. Under 28 U.S.C. § 1367, a district court may exercise supplemental  
18 jurisdiction over state law claims that "form part of the same case or controversy under  
19 Article III of the United States Constitution." 28 U.S.C. § 1367(a). 28 U.S.C. § 1367(c)  
20 also explicitly allows a reviewing court to decline to exercise supplemental jurisdiction if:

- 21 (1) the claim raises a novel or complex issue of State law,  
22 (2) the claim substantially predominates over the claim or claims over  
23 (3) the district court has dismissed all claims over which it has original  
jurisdiction, or

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25 <sup>1</sup> Responding defendants each opposed plaintiffs' motion to remand on the grounds that only  
26 plaintiff Gloria Tyler-Mallery moved to dismiss and to remand and did not list all federal claims in the  
27 motion to dismiss, omitting the federal RICO claim from the dismissal request. *See* Doc. # 13 at 2; Doc. #  
15 at 3-4. However, because plaintiffs' are appearing *pro se*, this Court deemed it appropriate to provide  
plaintiffs the opportunity to rectify those omissions. *See* Doc. # 25 at 1.

28 <sup>2</sup> Defendants MERS and Ocwen filed an opposition to the motion to dismiss based on the sole fact  
that the federal RICO claim was omitted from the request. *See* Doc. # 14 at 2. Since plaintiffs have now  
indicated their intent to dismiss all federal claims, that argument is moot.

1 (4) in exceptional circumstances, there are other compelling reasons for  
2 declining jurisdiction.

3 28 U.S.C. §§ 1367(c)(1)-(4). Thus, it is well within a court's discretion to exercise, or  
4 decline to exercise, supplemental jurisdiction over state law claims. United Mine Workers  
5 of America v. Gibbs, 383 U.S. 715, 726 (1966); Schneider v. TRW, Inc., 930 F.2d 986,  
6 994 (9th Cir. 1991). When deciding whether to exercise supplemental jurisdiction, a  
7 court should consider judicial economy, convenience, fairness and comity. Gibbs, 383  
8 U.S. at 726. The balance of factors tips in favor of declining to exercise supplemental  
9 jurisdiction when federal claims have been dismissed from a lawsuit. Carnegie Mellon  
10 Univ. v. Cohill, 484 U.S. 343, 350 (1988); Gibbs, 383 U.S. at 726; Gini v. Las Vegas  
11 Metropolitan Police Dept., 40 F.3d 1041, 1046 (9th Cir. 1994).

12 Defendants GMAC and ETS oppose plaintiffs' remand request, contending that the  
13 Court's subject matter jurisdiction is not affected by dismissal of all federal claims as long  
14 as federal subject matter jurisdiction existed at the time of removal. Doc. # 15 at 4-5  
15 (citing Sparta Surgical Corp. v. National Association of Securities Dealers, Inc., 159 F.3d  
16 1209, 1213 (9th Cir. 1998)("plaintiff may not compel remand by amending a complaint  
17 to eliminate federal question upon which removal was based."). This Court agrees with  
18 defendants GMAC and ETS that this Court has not been stripped of subject matter  
19 jurisdiction by dismissal of the federal claims. However, this Court still retains discretion  
20 to decline to exercise jurisdiction over the remaining state law claims if the balance of  
21 factors weigh in favor of declining jurisdiction. *See* 28 U.S.C. § 1367(c). Thus, this  
22 argument is unavailing.

23 This Court finds the first and second factors tip the scales in favor of declining to  
24 exercise supplemental jurisdiction over plaintiffs' remaining state law claims. The second  
25 factor has clearly been met since the Court has dismissed plaintiffs' federal claims over  
26 which this Court has original jurisdiction, leaving only complex state law claims for  
27 resolution. *See* 28 U.S.C. § 1367(c)(1), (2); Carnegie Mellon, 484 U.S. at 350; Gibbs, 383  
28 U.S. at 726; Gini, 40 F.3d at 1046. As to the first factor, although defendants MERS and

1 Ocwen, in their opposition to plaintiffs’ motion to remand, contend plaintiffs’ state law  
2 claims are merely “garden variety” claims,<sup>3</sup> this Court disagrees. *See* Doc. # 13 at 4.  
3 However, plaintiffs’ state law claims include allegations of fraud, negligence, fraudulent  
4 misrepresentation, breach of fiduciary duty, unjust enrichment, civil conspiracy, usury,  
5 unfair debt collections practices and slander of title, as well as claims that defendants  
6 violated various California statutes, such as California Civil Code §§ 2924, 2923.5,  
7 2923.6, and California Financial .Code §§ 4970-4970.8, These claims do not, in this  
8 Court’s view, appear to be merely “garden variety” claims. As such, this Court finds that  
9 plaintiffs’ remaining claims present complex state issues, further tipping the scale in favor  
10 of declining jurisdiction.

11 Defendants MERS and Ocwen also contend that this Court should retain  
12 jurisdiction over the state law claims in the interests of “judicial economy, convenience,  
13 fairness, and comity.” Doc. # 13 at 4-5 (quoting City of Chicago v. International College  
14 of Surgeons, 522 U.S. 156, 173 (1997)). Defendants MERS and Ocwen claim that “[t]o  
15 remand this case back to state court at this juncture will unnecessarily prolong the  
16 timeframe for resolving the matter, cause the imposition of unnecessary additional legal  
17 fees to retool Defendants’ motions to dismiss into state court responses, and prejudice  
18 Defendants’ rights to have the matter heard in federal court.” *Id.* at 5. This Court again  
19 disagrees with defendants MERS and Ocwen. This Court notes that only two of the ten  
20 defendants filed answers to the complaint and six of the defendants have filed motions to  
21 dismiss which, if granted, would likely result in an amended complaint being filed. Thus,  
22 continuing to exercise jurisdiction over the state law claims does not appear to effect the  
23 timeframe for resolution of the case nor require less litigation since this case is still in its  
24 infancy. This Court finds defendants will not be unduly prejudiced by having to litigate  
25 the remaining state law claims in the state court as opposed to this one. This Court,  
26 therefore, deems it appropriate to decline to exercise supplemental jurisdiction over

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28 <sup>3</sup> Defendants MERS and Ocwen also claim that, because the RICO claim was omitted from plaintiffs’  
dismissal request, the second and third factors are not met. *See* Doc. # 13 at 4. Since plaintiffs have now  
clarified their dismissal request to include the RICO claim, this argument is moot.

1 plaintiffs' remaining state law claims. Accordingly, the Court GRANTS plaintiffs' motion  
2 to remand the remaining state law claims back to state court.


3 Plaintiffs, in their motion to remand, seek an order requiring defendants to pay  
4 plaintiffs' costs and actual expenses, including attorney's fees, incurred by reason of the  
5 removal proceedings. *See* Doc. # 12 at 2. However, as noted by defendants GMAC and  
6 ETS, "when an objectively reasonable basis [for removal] exists, fees should be denied."  
7 Doc. # 15 at 5 (quoting Martin v. Franklin Capital Corp., 546 U.S. 132, 141 (2005)).  
8 The record clearly indicates that there was an objectively reasonable basis for removal of  
9 this case to this Court and, therefore, an award of fees and costs to plaintiffs is not  
10 warranted.

11 **CONCLUSION AND ORDER**

12 Based on the foregoing, IT IS HEREBY ORDERED that:

- 13 1. Plaintiffs' motion to dismiss [doc. # 11] all federal claims contained in the  
14 instant complaint is **GRANTED**;
- 15 2. Plaintiffs' motion to remand [doc. # 12] their remaining state law claims  
16 back to state court is **GRANTED**; and
- 17 3. Plaintiffs' request for fees and costs is **DENIED**.

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19 Dated: August 31, 2010

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22 JOHN A. HOUSTON  
23 United States District Judge  
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