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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DODOCASE VR, INC., et al.,
Plaintiffs,
v.
MERCHSOURCE, LLC, et al.,
Defendants.

Case No. [17-cv-07088-AGT](#)

**ORDER DISMISSING CASE FOR
LACK OF SUBJECT-MATTER
JURISDICTION**

United States District Court
Northern District of California

In the original and first two amended complaints in this case, the plaintiffs raised patent claims and a breach-of-contract claim. In the operative, third amended complaint they voluntarily withdrew their patent claims, leaving only their contract claim outstanding. Concerned that this latest amendment eliminated federal subject-matter jurisdiction, the Court ordered the parties to show cause. *See* ECF No. 196. Having considered their briefs in response to that order, the Court concludes that indeed it no longer has jurisdiction.

* * *

Before plaintiffs filed their third amended complaint, the Court had original jurisdiction over their patent claims, *see* 28 U.S.C. § 1338(a), and supplemental jurisdiction over their state-law contract claim, *see id.* § 1367(a). The question raised in the order to show cause was whether the Court could still exercise supplemental jurisdiction over their contract claim even though they voluntarily withdrew their patent claims in their third amended complaint.

Two circuit courts have considered this question and have both concluded that, no, a federal court cannot exercise supplemental jurisdiction over a state-law claim in an amended complaint if in that same amended complaint the plaintiff withdrew the federal claims that had supported original jurisdiction. *See Pintando v. Miami-Dade Hous. Agency*, 501 F.3d 1241, 1242 (11th Cir. 2007) (after plaintiff amended his complaint to drop his federal claim, “there no longer

1 *Nat'l v. Wellness House*, 70 F.3d 46, 50 (7th Cir. 1995) (because plaintiff chose to amend its
2 complaint to drop its federal claim, “there was no federal claim to which the[] state claims [that
3 remained] could be ‘supplemental’”).

4 Plaintiffs note that the Ninth Circuit hasn’t directly considered the same question, but that
5 fact doesn’t give the Court pause. This is because *Pintando* and *Wellness Community* logically
6 follow from two rules that the Court is bound to follow. First, “when a plaintiff files a complaint
7 in federal court and then voluntarily amends the complaint, courts look to the amended complaint
8 to determine jurisdiction.” *Rockwell Int’l Corp. v. United States*, 549 U.S. 457, 473–74 (2007).
9 Second, “supplemental jurisdiction may only be invoked when the district court has a hook of
10 original jurisdiction on which to hang it.” *Herman Family Revocable Tr. v. Teddy Bear*, 254 F.3d
11 802, 805 (9th Cir. 2001). Together, these rules mean that if a voluntarily amended complaint
12 doesn’t include a claim that supports original jurisdiction (i.e., a federal claim or a claim based on
13 diversity jurisdiction), then supplemental jurisdiction can’t be invoked.¹

14 Plaintiffs highlight an exception to the first of these rules, which they suggest is applicable.
15 The exception is that even after amendment, allegations or claims in a prior complaint may still be
16 considered if they are “adopted by reference” in the amended complaint. Fed. R. Civ. P. 10(c); *see*
17 *also Boelens v. Redman Homes, Inc.*, 759 F.2d 504, 508 (5th Cir. 1985) (cited in *Rockwell* and in
18 *Pintando*) (“[A]n amended complaint ordinarily supersedes the original and renders it of no legal
19 effect, unless the amended complaint specifically refers to or adopts the earlier pleading.”).

20 Plaintiffs’ third amended complaint does reference the prior complaints, noting that the
21 prior complaints raised patent claims over which the Court had original jurisdiction. *See* ECF No.
22 153, TAC ¶ 22. But the third amended complaint goes on to explain that the purpose of the
23 amendment was to “formally remove” the patent claims from the case so to avoid a protracted
24 dispute over patent validity. *Id.* ¶ 23. Given this explanation, plaintiffs cannot credibly maintain
25 that the third amended complaint incorporated the earlier complaints’ federal claims. The third
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¹ As noted in *Rockwell*, different rules govern when a defendant removes a case to federal court.
See 549 U.S. at 474 n.6. Those rules don’t govern here because there was no removal: the

1 amended complaint explicitly dropped the federal claims, and plaintiffs “must be held to the
2 jurisdictional consequences of a voluntary abandonment of claims that would otherwise provide
3 federal jurisdiction.” *Boelens*, 759 F.2d at 508.

4 The Court cannot exercise supplemental jurisdiction over the state-law claim remaining in
5 the third amended complaint. There simply is no “hook of original jurisdiction on which to hang
6 it.” *Herman*, 254 F.3d at 805.

7 * * *


8 Defendant ThreeSixty Brands Group LLC has asked the Court to dismiss the contract
9 claim against it with prejudice—asserting that the claim is baseless. To determine if the claim is
10 baseless, the Court would need to consider its merits; but the Court can’t do so because it lacks
11 subject-matter jurisdiction. *See Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94 (1998)
12 (“Without jurisdiction the court cannot proceed at all in any cause.”) (citation omitted).

13 A different conclusion doesn’t follow from *Tijerino v. Stetson Desert Project, LLC*, 934
14 F.3d 968 (9th Cir. 2019), as defendants suggest. That decision explained that jurisdiction and the
15 merits may be intertwined when the asserted basis for jurisdiction is 28 U.S.C. § 1331. This is
16 because federal claims that are “patently without merit” don’t support federal-question jurisdiction
17 under § 1331. *Id.* at 975. Here, the asserted basis for jurisdiction is § 1367 not § 1331, and no
18 analysis of the merits is necessary to determine that the Court lacks jurisdiction under § 1367.

19 Dismissal for lack of subject-matter jurisdiction is generally “without prejudice.” *Missouri*
20 *ex rel. Koster v. Harris*, 847 F.3d 646, 656 (9th Cir. 2017). The Court declines to deviate from
21 that standard here. All claims in this action are dismissed without prejudice and all pending
22 motions are vacated.²

23 **IT IS SO ORDERED.**

24 Dated: June 19, 2020

25 
26 ALEX G. TSE
27 United States Magistrate Judge

28 ² As defendants note, before plaintiffs filed their third amended complaint the Court resolved
29 certain legal issues. *See* ECF No. 145 (order granting defendants’ motion for a declaration of
rights). The Court had subject-matter jurisdiction at the time, so those legal determinations are not