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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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SERGIO RAMIREZ,  
Plaintiff,  
  
v.

Civ. No. S-09-3364 FCD/KJM

MEMORANDUM AND ORDER

BANK OF AMERICA HOME LOANS FKA  
COUNTRYWIDE HOME LOANS;  
FLAGSTAR BANK, FSB; WESTMORT  
CORPORATION; VI TOUNG NGUYEN  
AKA VALERIA VI TUONG NGUYEN;  
and DOES 1-20 inclusive,  
  
Defendants.

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This matter is before the court on the motion of defendant Bank of America, N.A., to dismiss plaintiff Sergio Ramirez's ("plaintiffs") complaint pursuant to Federal Rule of Civil Procedure ("FRCP") 12(b)(6).<sup>1</sup> On March 2, 2010, plaintiff filed

<sup>1</sup> The same day, plaintiff also filed an untimely First Amended Complaint, which contained no federal claims. The court previously vacated the hearing on the motion to dismiss as moot due to the filing of an amended complaint. However, as there are no longer any pending federal claims in either the original

1 a statement of non-opposition, requesting that his claims for  
2 violations of the Truth in Lending Act ("TILA") and the Real  
3 Estate Settlement Procedures Act ("RESPA") be dismissed without  
4 prejudice against all defendants. (Docket # 12.) Accordingly,  
5 plaintiffs' TILA and RESPA claims are dismissed. See, e.g. Fed.  
6 R. Civ. Pro. 41(a); Swedberg v. Marotzke, 339 F.3d 1139 (9th Cir.  
7 2003) (defendant's filing of a motion to dismiss, pursuant to  
8 FRCP 12(b), does not prevent the plaintiff from later filing a  
9 voluntary dismissal).

10 Dismissal of the TILA and RESPA claims leaves the complaint  
11 devoid of any federal claims. The remaining claims are state law  
12 claims for negligence, violation of the California Rosenthal Act,  
13 breach of fiduciary duty, fraud, violation of California Business  
14 and Professions Code §§ 17200 *et seq.*, breach of contract, breach  
15 of the implied covenant of good faith and fair dealing, and  
16 wrongful foreclosure. (Pl.'s Compl. ("Compl.").

17 Subject to the conditions set forth in 28 U.S.C. § 1367(c),  
18 district courts may decline to exercise supplemental jurisdiction  
19 over state law claims. See Acri v. Varian Associates, Inc., 114  
20 F.3d 999, 1000 (9th Cir. 1997)(en banc). The court's decision  
21 whether to exercise supplemental jurisdiction should be informed  
22 by values of "economy, convenience, fairness, and comity." Id.  
23 at 1001 (citations omitted). Further, primary responsibility for  
24 developing and applying state law rests with the state courts.  
25 Therefore, when federal claims are eliminated before trial,  
26 district courts should usually decline to exercise supplemental  
27 \_\_\_\_\_  
28 complaint or the untimely amended complaint, the court issues the  
following order dismissing plaintiff's action.

1 jurisdiction. See Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343,  
2 350 (1988); Gini v. Las Vegas Metropolitan Police Dept., 40 F.3d  
3 1041, 1046 (9th Cir. 1994) (“[I]n the usual case in which  
4 federal-law claims are eliminated before trial, the balance of  
5 factors . . . will point toward declining to exercise  
6 jurisdiction over the remaining state law claims.”)(quoting  
7 Schneider v. TRW Inc., 938 F.2d 986, 993 (9th Cir. 1991)). In  
8 accordance with 28 U.S.C. § 1367(c), the court declines to  
9 exercise supplemental jurisdiction over plaintiff’s remaining  
10 state law claims.

11 Accordingly, plaintiff’s complaint is DISMISSED without  
12 prejudice.

13 IT IS SO ORDERED.

14 DATED: March 29, 2010



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FRANK C. DAMRELL, JR.  
UNITED STATES DISTRICT JUDGE