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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARINA BOURKOV,)	
)	
Plaintiff,)	2:10-cv-01028-GEB-KJM
)	
v.)	<u>ORDER DENYING DEFENDANT'S</u>
)	<u>MOTION TO DISMISS AS MOOT</u>
BANK OF AMERICA CORPORATION; BAC)	<u>AND DECLINING SUPPLEMENTAL</u>
HOME LOAN SERVICING, L.P. AKA)	<u>JURISDICTION OVER PLAINTIFF'S</u>
COUNTRYWIDE FINANCIAL CORPORATION;)	<u>STATE LAW CLAIMS*</u>
MORTGAGE ELECTRONIC REGISTRATION)	
SYSTEMS, INC.; GUILD MORTGAGE)	
COMPANY; RECONTRUST COMPANY, N.A.;)	
FIDELITY NATIONAL TITLE COMPANY;)	
AND DOES 1-50, inclusive,)	
)	
Defendants.)	
_____)	

Defendant Fidelity National Title Company filed a motion under Federal Rule of Civil Procedure 12(b)(6) to dismiss Plaintiff's complaint on May 6, 2010. (Docket No. 6.) However, on May 13, 2010, Plaintiff timely filed a first amended complaint, which is now the operative pleading. Fed. R. Civ. P. 15(a)(1)(B) (stating that "[a] party may amend its pleading once as a matter of course within . . . 21 days after service of a motion under Rule 12(b)"); see also Hal

* This matter is deemed to be suitable for decision without oral argument. E.D. Cal. R. 230(g).

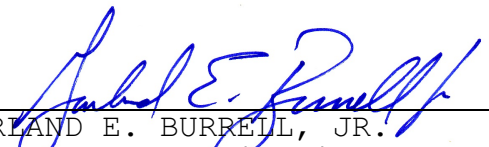
1 Roach Studios, Inc. v. Richard Feiner and Co., Inc., 896 F.2d 1542,
2 1546 (9th Cir. 1989) (stating that an amended complaint supercedes the
3 prior complaint). Since the pending dismissal motion does not address
4 the operative pleading, it is denied as moot.

5 However, Plaintiff's first amended complaint alleges three
6 claims under California law and has eliminated the federal Truth in
7 Lending Act ("TILA") and Real Estate Settlement Procedures Act
8 ("RESPA") claims which provided the sole basis for removal of this
9 action to federal court. Since Plaintiff is no longer pursuing any
10 federal claims, the court may sua sponte decide whether to continue
11 exercising supplemental jurisdiction over Plaintiff's remaining state
12 law claims. See Acri v. Varian Assocs., Inc., 114 F.3d 999, 1001 n.3
13 (9th Cir. 1997) (en banc) (suggesting that a district court may, but
14 need not, sua sponte decide whether to continue exercising
15 supplemental jurisdiction under 28 U.S.C. § 1367(c)(3) once all
16 federal law claims have been dismissed).

17 Under 28 U.S.C. § 1367(c)(3), a district court "may decline
18 to exercise supplemental jurisdiction over a [state law] claim" when
19 "all claims over which it has original jurisdiction" have been
20 dismissed. This decision should be informed by the values of economy,
21 convenience, fairness and comity as delineated by the Supreme Court in
22 United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 726 (1996). Acri,
23 114 F.3d at 1001. Comity weighs in favor of declining supplemental
24 jurisdiction since state courts have the primary responsibility for
25 developing and applying state law. See Acri, 114 F.3d at 1001
26 (stating that "in the usual case in which all federal-law claims are
27 eliminated before trial, the balance of factors will point towards
28 declining to exercise jurisdiction over the remaining state-law

1 claims" (quotations and citation omitted)); Curiel v. Barclays Capital
2 Real Estate Inc., No. S-09-3074 FCD/KJM, 2010 WL 729499, at *1 (E.D.
3 Cal. Mar. 2, 2010) (stating "primary responsibility for developing and
4 applying state law rests with the state courts" and declining to
5 exercise supplemental jurisdiction after dismissal of the federal
6 claims). Further, none of the other Gibbs factors favor retaining
7 supplemental jurisdiction over Plaintiff's state law claims in this
8 case. Therefore, the court declines to exercise supplemental
9 jurisdiction over Plaintiff's remaining state law claims, and this
10 case is remanded to the El Dorado County Superior Court in the State
11 of California from which it was removed.

12 Dated: May 18, 2010

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16 GARLAND E. BURRELL, JR.
17 United States District Judge
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