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## UNITED STATES DISTRICT COURT

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## FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 CHRISTOPHER D. SCHNEIDER,

No. 2:11-cv-2953-JAM-EFB-PS

12 Plaintiff,

13 v.

FINDINGS AND RECOMMENDATIONS14 BANK OF AMERICA N.A.; BANK OF  
15 AMERICA MORTGAGE; BANK OF  
16 AMERICA HOME LOANS SERVICING  
17 LP; BALBOA INSURANCE COMPANY;  
18 HOME RETENTION GROUP; QUALITY  
19 LOAN SERVICE CORPORATION;  
20 CLIFF COLER; and DOES 1-100,  
21 inclusive,

22 Defendants.

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Plaintiff has filed a motion for a new trial. ECF No. 297. As discussed below, plaintiff has filed a notice of appeal, *see* ECF No. 303, and the district court lacks jurisdiction to entertain the motion. Accordingly, it is recommended that the motion be denied.<sup>1</sup>

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<sup>1</sup> Plaintiff, proceeding *in propria persona*, initiated this action in November 2011. The matter was initially referred to a magistrate judge pursuant to the court's local rules. *See* E.D. Cal. L.R. 230(c)(21) (referring all actions in which all the plaintiffs or defendants are proceeding *in propria persona* to the assigned magistrate judge). Subsequently, on June 15, 2015, attorney Michael Yesk substituted into the case as attorney of record for plaintiff, ECF No. 217, and the referral to the magistrate judge was withdrawn. ECF No. 218; *see* E.D. Cal. L.R. 230(c). Following trial before the assigned district judge, attorney Yesk's motion to withdraw as counsel of record (ECF No. 300) was granted and the instant motion was referred to the currently

1 Plaintiff's claim under the Real Estate Settlement Procedures Act against defendant Bank  
2 of America N.A was tried to a jury in May 2016.<sup>2</sup> On May 20, 2016, the jury returned a verdict  
3 in defendant's favor and judgment was entered accordingly. ECF Nos. 291, 292. Plaintiff, acting  
4 *in propria persona*, filed this motion for a new trial on June 17, 2016. ECF No. 297. However,  
5 prior to a ruling on the motion for new trial, plaintiff filed a Notice of Appeal seeking review of  
6 all orders and "the district court's Judgment dated May 20, 2016." ECF No. 303.

7 The "filing of a notice of appeal confers jurisdiction on the court of appeals and divests  
8 the district court of control over those aspects of the case involved in the appeal." *Marrese v. Am.*  
9 *Acad. Of Orthopaedic Surgeons*, 470 U.S. 373, 379 (1985); *see also Williams v. Woodford*, 384  
10 F.3d 567 (9th Cir. 2002); *Gould v. Mutual Life Ins. Co. of N.Y.*, 790 F.2d 769, 772 (9th Cir. 1986)  
11 (The filing of a notice of appeal divest the district court of jurisdiction," and "[u]nless the  
12 appellate court remands to the district court, the latter is without jurisdiction to consider the  
13 motion to vacate judgement."). In light of plaintiff's Notice of Appeal of all orders and the  
14 judgment entered in this case, this court has no jurisdiction to grant the relief sought in plaintiff's  
15 motion.

16 Accordingly, it is hereby RECOMMENDED that plaintiff's motion for a new trial (ECF  
17 No. 297) be denied.

18 These findings and recommendations are submitted to the United States District Judge  
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
20 after being served with these findings and recommendations, any party may file written  
21 objections with the court and serve a copy on all parties. Such a document should be captioned  
22 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections

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27 assigned magistrate judge. ECF No. 305.

28 <sup>2</sup> All other defendants were previously dismissed.

1 within the specified time may waive the right to appeal the District Court's order. *Turner v.*  
2 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: August 25, 2016.

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5 EDMUND F. BRENNAN  
6 UNITED STATES MAGISTRATE JUDGE  
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