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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DAVID P. TISDALE,)
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 Plaintiff,)
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 vs.)
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 BANK OF AMERICA, N.A. et al.,)
)
 Defendants.)
 _____)

2:12-cv-01086-RCJ-RJJ

ORDER

This quiet title action appears to arise out of an alleged violation of the Truth in Lending Act (“TILA”). (*See* Am. Compl., May 2, 2012, ECF No. 1-4). Pending before the Court is Plaintiff’s motion for summary judgment. For the reasons given herein, the Court denies the motion and remands the case to state court.

In the present motion, Plaintiff identifies no causes of action or legal theories upon which he asks the Court to grant summary judgment but rather asks the Court to grant “summary judgment” because Defendants have failed to answer the First Amended Complaint (“FAC”), filed in state court. Defendants respond (and provide an affidavit supporting) that they have never been properly served with the FAC and therefore need not answer it, though they have not yet asked the Court to dismiss for that reason, and that counsel for Defendants is willing to accept service of the FAC on behalf of Defendants. Plaintiff provides no evidence of service of the FAC in reply or otherwise.

1 The removal papers indicate that the state court clerk entered default against Defendants
2 on the original Complaint the day before Plaintiff filed the FAC. (*See* Default, May 3, 2012, ECF
3 No. 1-6; Default, May 3, 2012, ECF No. 1-7). Plaintiff nullified the original Complaint and the
4 defaults entered against Defendants thereupon when he filed the FAC. *See Ferdik v. Bonzelet*,
5 963 F.2d 1258, 1262 (9th Cir. 1992) (citing *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967)). The
6 Court will not grant summary judgment on the FAC, which has apparently not been served.

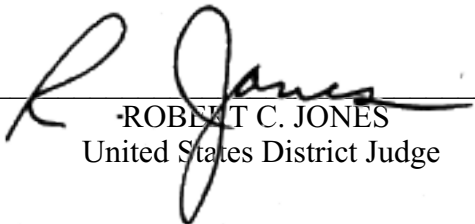
7 **CONCLUSION**

8 IT IS HEREBY ORDERED that the Motion for Summary Judgment (ECF No. 6) is
9 DENIED.

10 IT IS FURTHER ORDERED that the case is REMANDED, and the Clerk shall close the
11 case.

12 IT IS SO ORDERED.

13 Dated this 19th day of December, 2012.

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17 ROBERT C. JONES
18 United States District Judge
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