

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



JS - 5

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RUDD MILLER,)	Case No. CV 14-03392 DDP (AJWx)
)	
Plaintiff,)	ORDER GRANTED MOTION TO VACATE
)	DISMISSAL
v.)	
)	[Dkt. No. 30]
WELLS FARGO BANK, N.A.,)	
)	
Defendants.)	
)	

On December 23, 2014, Defendants filed a motion to dismiss this case on grounds of insufficient pleading and certain statutes of limitations having run. (Dkt. No. 26.) Plaintiff did not file an opposition to the motion by 21 days prior to the hearing date on the motion, as required by local rules, and the Court vacated the hearing and granted the motion to dismiss on the ground that it was unopposed and therefore tacitly consented to. (Dkt. No. 29.)

Plaintiffs' counsel has filed the present motion, asking the Court to vacate the previous order dismissing the complaint. (Dkt. No. 30.) Defendant has not opposed the motion to vacate.

Defendant's counsel served its motion via the Court's electronic ECF system. (Dkt. No. 26 at 16:11.) Plaintiff

1 represents to the Court that she did not receive this service,
2 because the ECF emails to her were diverted to a spam folder.
3 (Decl. Lauren Rode, ¶¶ 4-7.) Plaintiff's counsel also represents
4 that she has been working toward resolving the case and would not
5 have failed to oppose the motion but for the accidental diversion
6 of the ECF emails. (Id.; Mot. Vacate at 7-8.) The Court therefore
7 finds that Plaintiff's failure to oppose the motion was due to
8 "excusable neglect." Fed. R. Civ. P. 60(b)(1).

9 Good cause having been shown, and in light of the Court's
10 strong policy of deciding cases on the merits, the motion to vacate
11 the dismissal is GRANTED. This case is ordered re-opened.

12

13 IT IS SO ORDERED.

14

15

16 Dated: March 20, 2015

17



DEAN D. PREGERSON
United States District Judge

18

19

20

21

22

23

24

25

26

27

28