

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

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NADEEM AHMAD,)	Case No. 2:09-CV-1200 JAM-DAD
)	
Plaintiff,)	
)	<u>ORDER DENYING PLAINTIFF'S</u>
v.)	<u>MOTION FOR RECONSIDERATION</u>
)	
Wells Fargo Bank N.A., et al.,)	
)	
Defendants.)	
)	

This matter was referred to a United States Magistrate Judge pursuant to Local Rule 302(c) (21). On March 30, 2011, the Magistrate Judge filed Findings and Recommendations which were served on the parties (Doc. # 62). Objections to the Findings and Recommendations were filed (Doc. # 66). The Court then adopted the Findings and Recommendations and dismissed this matter with prejudice by an order filed on July 1, 2011 (Doc. # 68).

Plaintiff Nadeem Ahmad ("Plaintiff") then filed the present Motion for Reconsideration ("M.R.") of the Court's order adopting the Magistrate Judge's Findings and Recommendations on December 6, 2011 (Doc. # 72).

1 28 U.S.C. § 636(b) and E.D. Local Rule 303 govern the standard
2 for a Motion for Reconsideration. The district court “may
3 reconsider any pretrial matter . . . where it has been shown that
4 the Magistrate Judge’s order is clearly erroneous or contrary to
5 law.” 28 U.S.C. § 363(b)(1)A); E.D. Local Rule 303(f).

6 In this case, the present motion does not ask the Court to
7 reconsider the Magistrate Judge’s order, but instead asks the Court
8 to reconsider its own order dismissing Plaintiff’s claims with
9 prejudice. Thus, the substance of this motion is properly
10 characterized as an Application for Reconsideration pursuant to
11 Local Rule 230(j), which permits a litigant to seek reconsideration
12 of any motion. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) (“A
13 document filed pro se is to be liberally construed”) (internal
14 quotations omitted). Under Local Rule 230(j) the party
15 seeking reconsideration must present an affidavit or brief setting
16 forth the following items:

- 17 1. when and to what Judge . . . the prior motion was
 made;
- 18 2. what ruling, decision, or order was made thereon;
- 19 3. what new or different facts or circumstances are
 claimed to exist which did not exist or were not
20 shown upon prior motion, or what other grounds
 exist for the motion; and
- 21 4. why the facts or circumstances were not shown at
 the time of the prior motion.

22
23 L.R. 230(j).

24 In the present matter, Plaintiff only claims that the
25 Magistrate Judge’s Findings and Recommendations ignored the alleged
26 fact that a Substitution of Trustee substituting Defendant Loanstar
27 as the Trustee of the Deed of Trust for Plaintiff’s mortgage was
28 fraudulent. M.R., at 5-6. The Magistrate Judge’s Findings and

1 Recommendations as adopted by the Court, however, deal with this
2 specific issue. Section I of the Magistrate Judge's Findings and
3 Recommendations indicate that Plaintiff did not allege "the ability
4 to tender the entire amount due on the mortgage loan to the
5 lender." Findings & Recommendations, at 7. Plaintiff's claim
6 fails because there was no allegation that Plaintiff can tender the
7 full amount of the loan to the mortgagee, making any procedural
8 deficiency in the trustee's sale or accompanying documentation
9 irrelevant. See Somera v. Indymac Federal Bank, FSB, No. 2:09-cv-
10 1947-FCD-DAD, 2010 WL 761221, at *8 (E.D. Cal. Mar. 3, 2010)
11 (collecting authority). Thus the Court's prior order adopting the
12 Magistrate Judge's Findings and Recommendations was legally sound
13 and it is now reaffirmed.

14 Additionally, the Court's prior order did consider the
15 allegation that the Substitution of Trustee was invalid.
16 Accordingly, Plaintiff has not satisfied Local Rule 203(j) by
17 presenting new or different facts or circumstances that were not
18 shown at the time of the Court's previous order.

19
20 ORDER

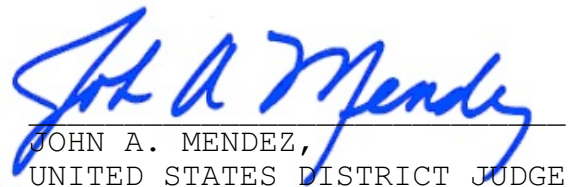
21 For the reasons set forth above,

22 1. The Motion for Reconsideration filed December 6, 2011 is
23 denied; and

24 2. The Court's July 1, 2011 order dismissing Plaintiff's
25 Second Amended Complaint with prejudice is reaffirmed.

26
27 IT IS SO ORDERED.

28 Dated: December 13, 2011


JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE