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

ARMANDO R. VENEGAS,

Plaintiff,

Case No. 2:09-CV-01236-JAM-GGH

ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS

v.

NDEX WEST, L.L.C.; ONE WEST
BANK; INDYMAC FEDERAL BANK, FSB;
and DOES 1 through 5, inclusive,

Defendants.

_____ /

This matter is before the Court on Defendants NDEX West,
L.L.C. and FDIC, as receiver and conservator of Defendant
IndyMac Federal Bank, FSB's (collectively "Defendants") motion
to dismiss Plaintiff Armando Venegas's ("Plaintiff") First
Amended Complaint pursuant to Federal Rules of Civil Procedure
41(b), 12(b)(1) and 12(b)(6). Doc. # 23. Plaintiff opposes the

1 motion. Doc. # 28, 29. For the reasons set forth below,
2 Defendants' motion to dismiss is GRANTED.¹

3 This action is substantively similar to a prior case that
4 was recently dismissed by this Court. See Case No. 09-cv-00289
5 ("Related Case"). Plaintiff asserts similar claims in this
6 action, against some of the same parties in the Related Case.
7 Defendants' Motion to Dismiss the Related Case was granted on
8 April 23, 2009. See Related Case, Doc. # 54. Plaintiff filed
9 the instant action four days later, on April 27, 2009, in
10 California Superior Court. The case was removed to this Court
11 on May 4, 2009. Doc. # 1.

14 Federal law sets forth a pre-lawsuit claims-filing process
15 that must be exhausted before a lawsuit can be filed against the
16 FDIC, or against a failed institution in FDIC receivership. 12
17 U.S.C. § 1821(d)(13)(D); see also McCarthy v. FDIC, 348 F.3d
18 1075, 1081 (9th Cir. 2003). Section 1821(d)(13)(D) of the
19 Financial Institutions Reform, Recovery, and Enforcement Act of
20 1989 provides that this claims process is a mandatory
21 prerequisite to judicial review. It is undisputed that
22 Plaintiff has failed to exhaust or even allege that he has
23 exhausted the administrative claims process. As a result, this
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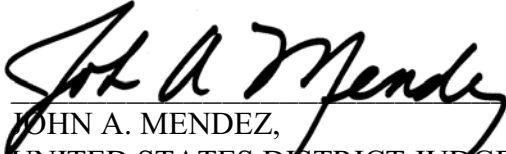
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28 ¹ Because oral argument will not be of material assistance,
the court orders this matter submitted on the briefs. E.D. Cal.
L.R. 78-230(h).

1 Court lacks jurisdiction over the claims asserted, and dismissal
2 is proper under FRCP 12(b)(1).

3 Accordingly, Defendants' Motion to Dismiss Plaintiff's
4 First Amended Complaint is GRANTED.
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7 IT IS SO ORDERED.

8 Dated: August 31, 2009

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11 JOHN A. MENDEZ,
12 UNITED STATES DISTRICT JUDGE
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