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

DENNL Y R. BECKER; THE BECKER
TRUST DATED MARCH 25, 1991,

Plaintiffs,

No. 2:10-cv-02799 LKK KJN PS

v.

WELLS FARGO BANK, N.A., INC.; et al.

Defendants.

ORDER

_____ /

Plaintiffs Denny Becker (“Becker”) and the Becker Trust Dated March 25, 1991 (“Becker Trust”) (collectively, the “plaintiff”¹) is proceeding without counsel in this action.² There are two different motions currently pending before the undersigned, as well as a stipulation between Wells Fargo Bank, N.A., Inc. (“defendant”) and plaintiff. This order addresses both of the pending motions and the pending stipulation.

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¹ The undersigned treats Becker and the Becker Trust as a singular plaintiff because, as discussed in the court’s order dated December 13, 2010 (Dkt. No. 21), Becker is the sole beneficiary of the Becker Trust.

² This matter was referred to the undersigned pursuant to Eastern District Local Rule 302(c)(21).

1 I. BACKGROUND

2 The first pending motion is plaintiff's Motion to Amend his pleading and request
3 to file a Third Amended Complaint. (Dkt. No. 70.) Plaintiff's Motion to Amend is set to be
4 heard on November 17, 2011. (Id. at 1.)

5 The second pending motion is defendant's Motion to Dismiss plaintiff's Second
6 Amended Complaint. (Dkt. No. 71.) Defendant's Motion to Dismiss is set to be heard on
7 November 10, 2011. (Id. at 1.)

8 The pending joint stipulation asks the court to continue the hearing date for
9 defendant's Motion to Dismiss so that it can be heard on November 17, 2011, at the same time as
10 plaintiff's Motion to Amend is to be heard. (Dkt. No. 75.)

11 II. DISCUSSION

12 Defendant filed its pending Motion to Dismiss targeting plaintiff's Second
13 Amended Complaint, and although the status of that Second Amended pleading has not yet been
14 resolved, plaintiff filed a Motion to Amend his pleading and a request to file a Third Amended
15 Complaint. The parties' pending stipulation is motivated by confusion regarding how to
16 efficiently approach the fluctuating status of plaintiff's pleadings. Indeed, District Judge Karlton
17 recently issued an order noting that "plaintiff's multiple and sometimes overlapping filings have
18 generated confusion" in this case. (Dkt. No. 76 at 2.)

19 To lessen the above-described confusion, and given the parties' willingness to
20 have both pending motions (Dkt. Nos. 70-71) heard on the same date, the undersigned hereby
21 vacates the hearing date for defendant's Motion to Dismiss (Dkt. No. 71). The undersigned will
22 not analyze any portion of defendant's Motion to Dismiss until plaintiff's Motion to Amend is
23 fully resolved, and accordingly, plaintiff need not presently file any opposition to defendant's
24 Motion to Dismiss. Defendant's Motion to Dismiss (Dkt. No. 71) will effectively be held in
25 abeyance pending the resolution of plaintiff's Motion to Amend (Dkt. No. 70). Following the
26 resolution of plaintiff's Motion to Amend, and depending on how that Motion is resolved, if

1 defendant wishes to proceed with its Motion to Dismiss (Dkt. No. 71) defendant may re-notice
2 that Motion and set a new hearing date.

3 The undersigned will hear plaintiff's Motion to Amend (Dkt. No. 70), as currently
4 set, on November 17, 2011. Upon entry of this order, plaintiff's Motion to Amend (Dkt. No. 70)
5 will be the only motion currently pending before the undersigned, and the undersigned will not
6 hear arguments regarding defendant's Motion to Dismiss (Dkt. No. 71) on either November 10,
7 2011, or November 17, 2011. In light of the foregoing, the parties' stipulation (Dkt. No. 75) is
8 denied as moot.

9 The undersigned notes that, in separate briefing before District Judge Karlton in
10 this case, defendant has suggested that the undersigned "[a]dvance the hearing date on plaintiff's
11 motion to file a Third Amended Complaint . . . and grant the motion." (Dkt. No. 73 at 2
12 (emphasis added).) Defendant has also suggested that defendant be allowed up to "and including
13 November 14 to file a pleading responding to the Third Amended Complaint." (Id. (emphasis
14 added).) These statements suggest that defendant may not intend to oppose plaintiff's pending
15 Motion to Amend his pleading (Dkt. No. 70) and would prefer to proceed directly to responding
16 to the substance of the proposed amended pleading itself. However, to date defendant has not
17 filed any statement of non-opposition confirming this position, and similarly, the parties have not
18 filed a stipulation containing defendant's written consent³ to plaintiff's filing of a third amended
19 pleading. Accordingly, at this time the undersigned will not assume that defendant has taken any
20 particular position with respect to plaintiff's Motion to Amend.

21 Accordingly, IT IS HEREBY ORDERED THAT:

22 1. The hearing date currently set for defendant's Motion to Dismiss (Dkt. No.
23 71) is vacated. The undersigned will not hear argument on defendant's Motion to Dismiss (Dkt.
24 No. 71) on either November 10, 2011, or November 17, 2011. Defendant's Motion to Dismiss

25 ³ Under Federal Rule of Civil Procedure 15(a)(2), "a party may amend its pleading only
26 with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2).

