

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

JAMES KOURETAS,

Plaintiff,

v.

NATIONSTAR MORTGAGE
HOLDINGS, INC. and BANK OF
AMERICA, N.A.,

Defendants.

No. 2:13-cv-02632-MCE-KJN

MEMORANDUM AND ORDER

Presently before the Court is Plaintiff James Kouretas' ("Plaintiff") Motion for Reconsideration ("Motion"). ECF No. 56. For the following reasons, the Motion is GRANTED.¹

BACKGROUND

On December 20, 2013, Plaintiff filed a complaint against Defendants Nationstar Mortgage Holdings, Inc. ("Nationstar") and Bank of America, N.A. ("BofA") (collectively "Defendants"). ECF No. 1. The initial complaint asserted causes of action for violations

¹ Because oral argument would not be of material assistance, the Court ordered this matter submitted on the briefs. See E.D. Cal. Local R. 230(g); ECF No. 61.

1 of California’s Homeowner Bill of Rights, Cal. Civ. Code §§ 2923.6(c), 2923.7(a); the
2 Racketeering Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §§ 1961-
3 1968; and California Welfare & Institutions Code sections 15600 et seq., which prohibit
4 elder abuse. *Id.* BofA and Nationstar filed separate motions to dismiss for failure to
5 state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6).² ECF Nos. 13 (BofA),
6 16 (Nationstar). On March 14, 2014, the Court granted both motions to dismiss and
7 permitted Plaintiff to file an amended complaint. ECF No. 27.

8 On April 7, 2014, Plaintiff filed a first amended complaint.³ ECF No. 32. In that
9 complaint, Plaintiff asserted causes of action for breach of the implied covenant of good
10 faith and fair dealing, wrongful foreclosure, and financial elder abuse in violation of
11 California Welfare & Institutions Code sections 15600 et seq. *Id.* Again, each defendant
12 filed a Rule 12(b)(6) motion to dismiss. ECF Nos. 33 (Nationstar), 35 (BofA). On
13 August 19, 2014, the Court granted both motions to dismiss. ECF No. 49.

14 Addressing Plaintiff’s causes of action in turn, the Court dismissed with leave to
15 amend the claim that Defendants breached the implied covenant of good faith and fair
16 dealing. The Court initially determined that the first amended complaint failed to allege
17 the existence of a contractual provision prohibiting Defendants from asserting the right to
18 adhere to the original contract while Plaintiff’s request for a loan modification was
19 pending. *Id.* at 5-7, 10. Next, the Court found that to the extent Plaintiff alleged that
20 Defendants committed a tortious breach of the implied covenant of good faith and fair
21 dealing, the claim failed for lack of a special fiduciary relationship between Plaintiff, as
22 borrower, and Defendants, as lenders. *Id.* at 6-7. As to Plaintiff’s claim for wrongful
23 foreclosure, the Court concluded that Plaintiff failed to adequately plead any of the
24 requisite elements, including that a foreclosure had actually occurred, and dismissed the
25 claim without leave to amend. *Id.* at 7-9. Finally, the Court dismissed without leave to

26 ² All further references to “Rule” or “Rules” are to the Federal Rules of Civil Procedure unless
27 otherwise noted.

28 ³ Plaintiff first filed an unsigned, and therefore deficient, first amended complaint on April 6, 2014.
ECF No. 31.

1 amend Plaintiff's claim of financial elder abuse on the grounds there was no allegation
2 that Plaintiff had been deprived of any real or personal property. Id. at 9-10.

3 In dismissing the first amended complaint, the Court's order included the following
4 provision: "Not later than twenty (20) days following the date this Memorandum and
5 Order is electronically filed, Plaintiff may (but is not required to) file an amended
6 complaint. If no amended complaint is filed within said twenty (20) day period, without
7 further notice to the parties, Plaintiff's claim for breach of the implied covenant of good
8 faith and fair dealing will also be dismissed with prejudice and this action will be closed."
9 Id. at 11 (emphasis added). Thus, pursuant to the Court's memorandum and order,
10 Plaintiff was permitted, but not required, to file a second amended complaint no later
11 than September 8, 2014.

12 Without leave of the Court, Plaintiff filed an untimely second amended complaint
13 on September 10, 2014.⁴ ECF No. 51. On September 29, 2014, consistent with its prior
14 memorandum and order, the Court dismissed Plaintiff's only potentially surviving claim—
15 for beach of the implied covenant of good faith and fair dealing—with prejudice and
16 directed the Clerk of the Court to close the case.⁵ ECF No. 54. Consequently, judgment
17 in favor of Defendants was entered. ECF No. 55.

18 Plaintiff then timely filed the instant Motion on the grounds the second amended
19 complaint was filed late due solely to inadvertent attorney error. ECF No. 56.
20 Specifically, Plaintiff states that the deadline for submission was mistakenly calendared
21 as twenty court days rather than twenty calendar days. Id. at 1. Declarations from
22 Plaintiff's attorney of record and his associate accompanied the Motion. ECF Nos. 56-1,
23 56-2.

24 ///

25 ///

26 _____
27 ⁴ The second amended complaint asserts causes of action for promissory estoppel, violation of
California's unfair competition law, and RICO violations. ECF No. 51.

28 ⁵ The order also denied as moot Nationstar's motion to dismiss the second amended complaint.

1 amended complaint was due for filing constitutes excusable neglect. See Pincay,
2 389 F.3d at 860; Ahanchian, 624 F.3d at 1262. Finally, as to the remaining factor, the
3 Court does not find that Plaintiff acted in bad faith by filing the second amended
4 complaint two days late.⁶

5
6 **CONCLUSION**

7
8 For the foregoing reasons, Plaintiff's Motion for Reconsideration, ECF No. 56, is
9 GRANTED and the Court's September 29, 2014, Judgment, ECF No. 55, is VACATED.
10 The Clerk of Court is directed to return this case to the civil active list.

11 IT IS SO ORDERED.

12 Dated: January 28, 2015

13
14 
15 _____
16 MORRISON C. ENGLAND, JR., CHIEF JUDGE
17 UNITED STATES DISTRICT COURT
18
19
20
21
22
23
24
25
26

27 _____
28 ⁶ Nevertheless, Plaintiff is cautioned to follow all applicable rules and abide by this Court's orders
in the future.