

1 hearing on the Defendants' motions to dismiss is scheduled for April 2, 2015.

2 On March 1, 2015, Plaintiff filed the instant Ex Parte Application seeking leave to
3 amend his complaint based on new case law and arguing that a recently published case
4 opens the door to a negligence claim against Defendants. ECF No. 68 at 1-2.

5 Specifically, Plaintiff argues that after Alvarez v. BAC Home Loans Servicing, L.P., 228
6 Cal. App. 4th 941 (2014), California negligence law now recognizes a duty between a
7 bank lender and a homeowner/borrower under certain circumstances. Id. Defendants
8 both oppose Plaintiff's Ex Parte Request.

9 To prevail on an ex parte application, Plaintiff must show that: (1) he is not the
10 cause of his own predicament; and (2) the order is "needed" to avoid some type of harm.
11 Hanger Prosthetics & Orthotics, Inc. v. Capstone Orthopedic, Inc., No. 206-CV-02879-
12 GEB-KJM, 2007 WL 3340935, at *1 (E.D. Cal. Nov. 9, 2007) (citing Mission Power
13 Engineering Co. v. Continental Cas. Co., 883 F.Supp. 488, 492 (C.D.Cal. 1995)). "Ex
14 parte applications are not intended to save the day for parties who have failed to present
15 requests when they should have." White v. Cinemark USA Inc., No. Civ.S 04 397 GEB
16 KJM, 2005 WL 3890635, at * 1 (E.D. Cal. Apr. 27, 2005) (quoting In re Intermagnetics
17 America, Inc., 101 B.R. 191, 193 (Bankr. C.D. Cal. 1989).

18 Here, Plaintiff fails to establish he is without fault in creating the need for the ex
19 parte relief. In his Ex Parte Application, Plaintiff cites the "newness" of the Alvarez
20 decision as the reason why his counsel was unaware of the decision and why he failed
21 to allege negligence in his SAC. This argument is unconvincing for two reasons. First,
22 Alvarez was decided on August 7, 2014, which was over a month prior to the filing of
23 Plaintiff's operative SAC on September 10, 2014. See Alvarez, 228 Cal. App. 4th 941
24 (2014); ECF No. 51. A month would have been sufficient time for Plaintiff's counsel to
25 have reviewed the current case law and alleged a negligence cause of action in the
26 SAC. Second, six months passed between the Alvarez decision and the filing of the
27 instant ex parte request. Therefore, even if negligence was not alleged in the SAC itself,
28 Plaintiff still had ample time to bring the decision to the Court's attention through its

1 standard motion procedures. That Plaintiff and his counsel were “simply unaware of the
2 opinion” until recently does not change the fact that it was decided months ago.
3 Because Plaintiff is responsible for any harm that might result from failing to plead
4 negligence and failing to file a timely motion to amend, ex parte relief is not justified
5 here, and his Ex Parte Application (ECF No. 68) is DENIED.

6 IT IS SO ORDERED.

7 Dated: March 12, 2015

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11 MORRISON C. ENGLAND, JR., CHIEF JUDGE
12 UNITED STATES DISTRICT COURT
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