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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

VERNON DECK,

Plaintiff,

v.

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

Defendants.

No. 2:17-cv-0234-MCE-KJN PS

ORDER

On January 9, 2019, the court dismissed plaintiff’s first amended complaint, which failed to comply with the Ninth Circuit’s remand and this court’s November 28, 2018 order. (ECF No. 68.) Plaintiff was granted 21 days to file a second amended complaint, limited to no more than 30 pages, that asserts only claims under the California Homeowner Bill of Rights. (Id.) In light of plaintiff’s *pro se* status, the court declined to impose sanctions at that time, but expressly cautioned that future failure to comply with the court’s orders and/or failure to file a compliant complaint would result in the imposition of sanctions. (Id.)

Thereafter, on January 29, 2019, not long before the second amended complaint was due, plaintiff filed a notice of appeal to the Ninth Circuit Court of Appeals. (ECF No. 69.) Out of an abundance of caution, the court then issued the following clarifying order on January 31, 2019:

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1 The Ninth Circuit Court of Appeals will consider plaintiff's
2 interlocutory appeal on whatever schedule it deems appropriate.
3 However, plaintiff is cautioned that unless the Ninth Circuit issues a
4 formal stay, this court's order requiring the filing of a second
5 amended complaint remains in full effect. Nevertheless, in light of
6 plaintiff's *pro se* status, and in the event that plaintiff may have
7 delayed preparing a second amended complaint based on a belief that
8 a notice of appeal would automatically stay the district court action,
9 the court grants plaintiff a limited extension of time to file a second
10 amended complaint.

11 (ECF No. 72.) More specifically, the court *sua sponte* granted plaintiff an extension until
12 February 20, 2019 to file either a second amended complaint in compliance with the court's
13 January 9, 2019 order or a notice of voluntary dismissal of the action. (Id.) The court again
14 cautioned that failure to file either a second amended complaint or a notice of voluntary dismissal
15 by February 20, 2019 (absent a stay order issued by the Ninth Circuit) may result in the
16 imposition of sanctions, including monetary sanctions and/or a recommendation that the action be
17 dismissed pursuant to Federal Rule of Civil Procedure 41(b). (Id.)

18 Although the February 20, 2019 deadline has now passed, plaintiff failed to file either a
19 compliant second amended complaint or a notice of voluntary dismissal. At this point, the court
20 has considered whether the action should be dismissed. Nevertheless, in light of plaintiff's *pro se*
21 status and the court's desire to resolve the action on the merits, the court first attempts lesser
22 sanctions in the form of monetary sanctions. The court also provides plaintiff with one final
23 opportunity to file a compliant second amended complaint.

24 Accordingly, IT IS HEREBY ORDERED that:

- 25 1. Within 21 days of this order, plaintiff shall pay to the Clerk of Court \$250.00 in
26 monetary sanctions based on his failure to comply with the court's orders.
- 27 2. Within 21 days of this order, plaintiff shall file either a second amended complaint that
28 complies with the court's January 9, 2019 order, or a notice of voluntary dismissal of
the action.

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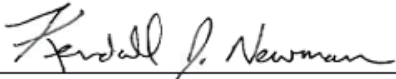
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3. Failure to timely comply with this order will result in a recommendation that the action be dismissed pursuant to Federal Rule of Civil Procedure 41(b).

Dated: February 22, 2019


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE