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

JAN SCHIEBERL,

Plaintiff,

v.

AVELO MORTGAGE LLC, *et al.*,

Defendants.

No. C 08-3321 SI

**ORDER GRANTING DEFENDANTS’
MOTIONS TO DISMISS SECOND
AMENDED COMPLAINT WITHOUT
LEAVE TO AMEND**

United States District Court
For the Northern District of California

Motions by defendants Robert Jackson and Citimortgage to dismiss the complaint are scheduled for a hearing on May 1, 2009. Pursuant to Civil Local Rule 7-1(b), the Court determines that the matters are appropriate for resolution without oral argument, and VACATES the hearing. For the reasons set forth below, the Court GRANTS defendants’ motions to dismiss the complaint without leave to amend.

DISCUSSION

By order filed December 3, 2008, the Court granted defendants’ motions to dismiss the complaint, and granted plaintiff “one final opportunity” to amend the complaint. Docket No. 35. The Court’s December 3, 2008 order explained in great detail why plaintiff’s claims were deficient, and provided guidance to plaintiff in the event she chose to amend the complaint. On December 19, 2008, plaintiff filed a 78 page second amended complaint. Docket No. 40. The second amended complaint suffered from and amplified the deficiencies contained in the previous complaints. By order filed March

1 30, 2009, the Court granted renewed motions to dismiss brought by numerous defendants¹ – not
2 including defendants Jackson or Citimortgage – and dismissed the amended complaint without leave
3 to amend as to those defendants. Docket No. 86.

4 Now before the Court are motions to dismiss the second amended complaint filed by defendants
5 Robert Jackson and Citimortgage. Plaintiff has not filed oppositions to the motions. Instead, she has
6 filed a “Notice and Demand for Enforcement of Nihil Dicit Judgment” contending that defendants have
7 not filed a timely answer and that default judgment should be entered. All of the reasons set forth in the
8 March 30, 2009 order for dismissing the amended complaint as to the other defendants apply with equal
9 force to defendants Jackson and Citimortgage. Plaintiff has failed to state a claim upon which relief can
10 be granted, and any further leave to amend would be futile. Accordingly, the Court GRANTS
11 defendants’ motions without leave to amend.

12
13 **CONCLUSION**

14 For the foregoing reasons, the Court hereby GRANTS defendants’ motions to dismiss. Docket
15 Nos. 75 & 80. The Court DENIES plaintiff’s “Notice and Demand for Enforcement of Nihil Dicit
16 Judgment.” Docket No. 85. This case is now closed.

17
18 **IT IS SO ORDERED.**

19
20 Dated: April 27, 2009

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22 _____
23 SUSAN ILLSTON
24 United States District Judge

25
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27 _____
28 ¹ Avelo Mortgage, LLC, Northwest Trustee Services, the Superior Court of California, Judge William Kolin, Ken Torre, Contra Costa County, and Warren Rupf, Sheriff-Coroner of Contra Costa County.