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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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11 GABRIEL JIMENEZ,

No. C 09-05575 CRB

12 Plaintiff,

**ORDER GRANTING MOTIONS TO
DISMISS**

13 v.

14 BANK OF AMERICA FKA, et al.,

15 Defendants.
16 _____/

17 In this mortgage case, Plaintiff has brought suit against Bank of America FKA
18 Countrywide Home Loans, AEGIS Wholesale Corporation, Commonwealth Land Title,
19 Mortgage Electronic Registration Systems, Inc., Twin Capital Mortgage, and Darius John
20 Mirshanzaden (an individual and presumably an employee of Twin Capital). He alleges
21 causes of action for: (1) violation of TILA; (2) violation of the California Rosenthal Act, Cal.
22 Civil Code §§ 1788; (3) negligence; (4) violation of RESPA; (5) breach of fiduciary duty; (6)
23 fraud; (7) violations of California Business and Professions Code § 17200; (8) breach of
24 contract; (9) breach of the implied covenant of good faith and fair dealing; and (10) wrongful
25 foreclosure.

26 Two sets of defendants, (1) Commonwealth Land Title, and (2) Twin Capital
27 Mortgage and Mirshanzaden, have brought motions to dismiss various causes of action, now
28 pending before this Court. Plaintiff failed to file an Opposition to either motion, in violation

1 of Civil Local Rule 7-3, and Plaintiff's counsel did not respond to messages from the court's
2 staff alerting Plaintiff to said failure. At the motion hearing held today, Plaintiff's counsel
3 did not oppose the motions, but asked the Court for leave to amend. When the Court asked
4 Plaintiff's counsel what reason she had to amend, counsel provided none, instead asserting
5 simply that she was "submitting."

6 Under Federal Rule of Civil Procedure 15(a)(2), permission to amend is not
7 automatic; it is only allowed "when justice so requires." Though leave is often "freely
8 given," the Court must also consider such factors as "undue delay, bad faith or dilatory
9 motive on the part of the movant, repeated failure to cure deficiencies by amendment, futility
10 of amendment, etc." See Foman v. Davis, 371 U.S. 178, 182 (1962). In light of the
11 arguments in Defendants' motions, as well as Plaintiff's failure to articulate any additional
12 facts that could be added upon amendment, the Court finds that amendment would be futile.
13 See Steckman v. Hart Brewing, Inc., 143 F.3d 1293, 1298 (9th Cir. 1998). Moreover, "a
14 district court does not abuse its discretion in denying a motion to amend where the movant
15 presents no new facts but only new theories and provides no satisfactory explanation for his
16 failure to fully develop his contentions originally." Bonin v. Calderon, 59 F.3d 815, 845 (9th
17 Cir. 1995).

18 Accordingly, the Court GRANTS Defendants' motions, with prejudice.

19 **IT IS SO ORDERED.**

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22 Dated: February 5, 2010



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE