

United States District Court
For the Northern District of California

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

)	Case No. C 13-2450 SC
)	
MIGUEL A. VALDEZ,)	<u>ORDER TO SHOW CAUSE</u>
)	
Plaintiff,)	
)	
v.)	
)	
JPMORGAN CHASE BANK, N.A., and)	
DOES 1-50, inclusive,)	
)	
Defendants.)	
)	
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)	
)	

Plaintiff Miguel A. Valdez ("Plaintiff") filed this case on April 30, 2013, and Defendant JPMorgan Chase Bank, N.A. ("Defendant") removed it to federal court on May 30. ECF No. 1. Plaintiff's complaint asserted causes of action for fraud, fraud in the inducement, and violations of the "unlawful" and "unfair" prongs of California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200. Defendant moved to dismiss the complaint, and on August 23, the Court granted that motion because (1) Plaintiff's claims based on violations of two federal statutes were time-barred, (2) Plaintiff's fraud-based claims lacked the particularity

1 required by Federal Rule of Civil Procedure 9(b), and (3) Plaintiff
2 pled no facts supporting his UCL claims. ECF No. 24 ("Aug. 23
3 Order") at 4-8. The Court dismissed Plaintiff's case with leave to
4 amend, giving Plaintiff thirty days from August 23 to file an
5 amended complaint or risk dismissal with prejudice. Id. at 7-8.

6 Thirty days passed. On October 4, Plaintiff filed an amended
7 complaint, ECF No. 25, coupled with a notice of voluntary dismissal
8 without prejudice, ECF No. 26. Voluntary dismissals without court
9 orders are acceptable under Rule 41 if filed before an opposing
10 party serves an answer or a motion for summary judgment, or if the
11 parties stipulate to a dismissal. Rule 41(a)(1). Otherwise the
12 dismissal must be by court order. Rule 41(a)(2).

13 Under other circumstances, therefore, Plaintiff's notice of
14 voluntary dismissal would be acceptable: he filed both an amended
15 complaint and a notice of voluntary dismissal. But under these
16 specific circumstances, with the Court having given Plaintiff
17 thirty days to amend or risk dismissal with prejudice, Plaintiff's
18 notice is ineffective. Plaintiff ignored his Court-imposed
19 deadline for nearly two weeks. The Court will not abide this.
20 See, e.g., Maleon v. U.S. Postal Serv., 833 F.2d 128, 132-33 (9th
21 Cir. 1987) (failure to obey a court order, after being warned and
22 instructed on how to comply, may warrant dismissal with prejudice).

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1 The Court declines to grant Plaintiff a court order dismissing
2 the action without prejudice. Plaintiff must file a short brief of
3 no more than five pages explaining his delay in filing the amended
4 complaint and his rationale for filing a notice of voluntary
5 dismissal. Plaintiff should file the brief within one week of this
6 Order's signature date.

7 The Court will consider this brief in determining whether to
8 dismiss Plaintiff's case with prejudice.

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IT IS SO ORDERED.

Dated: October 24, 2013



UNITED STATES DISTRICT JUDGE