

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

KENNETH BARKER and LOIS ANNE BARKER,

No. C 08-2898 CW

Plaintiffs,

ORDER GRANTING
PLAINTIFFS'
MOTION TO FILE A
SECOND AMENDED
COMPLAINT

v.

DEFAULT RESOLUTION NETWORK; FIDELITY
NATIONAL TITLE; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.; ALBORG,
VEILUVA & EPSTEIN; TITLE COURT
SERVICES, INC.; GENPACT MORTGAGE
SERVICES; JAMES GIPS; JULIE WAGNER;
HOLLAND AND KNIGHT LLP; VITO
COSTANZO; RICHARD PETTY; TAYLOR
WOODS; MICHEAL VEILUVA; DARRELL
MARTIN; and DOES 1 through 50,
inclusive,

Defendants.

_____ /

Plaintiffs Kenneth Barker and Lois Anne Barker have moved to file a second amended complaint. Defendants Default Resolution Network, Fidelity National Title Insurance Co., Mortgage Electronic Registration Systems, Inc., Alborg, Veiluva & Epstein, LLP, and Genpact Mortgage Services oppose the motion. The motion was taken under submission on the papers. Having considered all of the parties' papers, the Court grants the motion to file a second amended complaint.

1 This dispute arises out of a notice of default and election to
2 sell under deed of trust for the property located at 2349 Royal
3 Oaks Drive in Alamo, California. The notice was recorded on May 1,
4 2008 and, on May 8, 2008, served on Plaintiffs, the joint owners of
5 the property. Plaintiffs allege that Defendants engaged in a
6 scheme to foreclose on their home illegally in violation of the
7 Racketeer Influenced and Corrupt Organizations Act (RICO).
8 Defendants moved to dismiss the original complaint because it did
9 not plead with particularity each element of the RICO cause of
10 action. On August 8, 2008, the Court granted Defendants' motion to
11 dismiss with leave to amend. Docket no. 30. On September 5, 2008
12 Genpact recorded a new Notice of Default and Notice of Trustee's
13 Sale curing a recording error and updating the reinstatement
14 amount.¹ Plaintiffs allege that they received these notices on
15 September 15, 2008. On September 8, 2008 Plaintiffs filed their
16 first amended complaint and, within two weeks, Defendants filed
17 motions to dismiss.

18 Instead of responding to the motion to dismiss, Plaintiffs
19 filed a second amended complaint on October 9, 2008. Plaintiffs
20 assert that the new Notice of Default and Notice of Trustee's Sale
21 identified new and different facts that warrant the filing of a
22 second amended complaint. The Court notes that the second amended
23 complaint differs only slightly from the first amended complaint.
24 It appears that the employees and individual attorneys working for
25 the existing named defendants were added as new named defendants.

26
27 ¹Neither Plaintiffs nor Defendants informed the Court as to
the nature of the recording error.

1 In the interest of judicial economy the Court GRANTS
2 Plaintiffs' motion to file a second amended complaint. The Court
3 will consider Defendants' motions to dismiss Plaintiffs' first
4 amended complaint as applicable to Plaintiffs' second amended
5 complaint. Within one week of the date of this order, Defendants
6 may file a brief, no more than ten pages, to address any new facts
7 or issues raised in Plaintiffs' second amended complaint.
8 Plaintiffs' opposition is due three weeks from the date of this
9 order, after Defendants' filing, and Defendants reply is due one
10 week thereafter. If Plaintiffs do not file a timely opposition,
11 the case will be dismissed for failure to prosecute.

12 IT IS SO ORDERED.

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14 Dated: 11/12/08



15 CLAUDIA WILKEN
16 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 KENNETH BARKER et al,

5 Plaintiff,

6 v.

7 DEFAULT RESOLUTION NETWORK et al,

8 Defendant.

Case Number: CV08-02898 CW

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,
10 Northern District of California.

11 That on November 12, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
14 in the Clerk's office.

15 William Stephen Fiske
16 Michael John Veiluva
17 Darrell Charles Martin
18 Alborg, Veiluva & Epstein LLP
19 200 Pringle Avenue, Suite 410
20 Walnut Creek, CA 94596

21 Glenn Michael Perrell
22 Glenn M Perrell
23 205 S Broadway Ste 302
24 Los Angeles, CA 90012

25 Kenneth Barker
26 Lois Anne Barker
27 2349 Royal Oaks Drive
28 Alamo, CA 94507

Richard William Petty
Vito Anthony Costanzo
Holland & Knight LLP
633 W 5th St, 21st Fl
Los Angeles, CA 90071-2005

Dated: November 12, 2008

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk