

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

3 SUSAN P. VANDERBURGH,

4 Plaintiff,

5 v.

6 GOLDEN EMPIRE MORTGAGE dba GEM  
7 CAPITAL FUNDING and EMC MORTGAGE  
CORPORATION,

8 Defendants.  
\_\_\_\_\_ /

No. C 09-01361 CW

ORDER GRANTING  
PLAINTIFF'S MOTIONS  
FOR RELIEF FROM  
JUDGMENT AND FOR  
PERMISSION TO  
E-FILE

9  
10 Plaintiff moves for relief from the judgment issued on  
11 November 25, 2009 and moves for permission to use the Court's  
12 electronic case filing system (ECF). Defendant EMC opposes only  
13 the motion for relief from judgment.<sup>1</sup> The motions were taken under  
14 submission on the papers. Having considered all the papers filed  
15 by the parties, the Court grants the motions for relief from  
16 judgment and for permission to use the ECF system.

17 On September 30, 2009, the Court issued an Order dismissing  
18 Plaintiff's complaint with leave to amend within three weeks from  
19 the date of the order. Plaintiff did not file an amended complaint  
20 within the three week period. On November 5, 2009, EMC filed,  
21 under Federal Rule of Civil Procedure 41(b), a motion to dismiss  
22 the complaint with prejudice on the ground that Plaintiff had  
23 failed to comply with an order of the Court. On November 25, 2009,  
24 the Court issued an Order granting EMC's motion to dismiss. On the  
25 same date, judgment was entered in favor of EMC and against  
26 Plaintiff.

27 \_\_\_\_\_  
28 <sup>1</sup>Claims against Defendant Golden Empire Mortgage were  
previously dismissed for failure to prosecute.

1 On December 9, 2009, Plaintiff filed the instant motions.  
2 Plaintiff indicates that, due to faulty mail service, she did not  
3 receive the Court's September 30 and November 25 Orders and only  
4 became aware of them when she used a friend's account to access the  
5 Court's ECF system. Plaintiff indicates that her faulty mail  
6 delivery problem will be remedied once she has access to the  
7 Court's ECF system. EMC opposes the motion on the ground that it  
8 was not filed within the ten-day period for filing motions under  
9 Federal Rule of Procedure 59(e) and because Plaintiff failed to  
10 provide any basis for granting the motion.

11 Prior to December 1, 2009, Rule 6 of the Federal Rules of  
12 Civil Procedure provided that, if the period for filing specified  
13 under the Rules was less than eleven days, intermediate Saturdays,  
14 Sundays and legal holidays were to be excluded. On December 1,  
15 2009, Rule 6 was amended to provide that every day was to be  
16 counted in computing any time period specified under the Rules.  
17 Because the Court's judgment was entered on November 25, 2009,  
18 Saturdays, Sundays and legal holidays are excluded from counting  
19 the ten-day deadline for filing a motion under Rule 59. Excluding  
20 the intervening Saturdays, Sundays and the Thanksgiving holiday,  
21 Plaintiff's Rule 59 motion was filed within the ten-day period.

22 Rule 59(e) motions are interpreted as motions for  
23 reconsideration, and are appropriate if the district court "(1) is  
24 presented with newly discovered evidence, (2) committed clear error  
25 or the initial decision was manifestly unjust, or (3) if there is  
26 an intervening change in controlling law." School Dist. No. 1J,  
27 Multnomah County, Oregon v. AcandS, Inc., 5 F.3d 1255, 1263 (9th  
28 Cir. 1993), cert. denied, 512 U.S. 1236 (1994).



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7 GOLDEN EMPIRE MORTGAGE et al,

8 Defendant.

Case Number: CV09-01361 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 February 9, 2010, 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 Susan P. Vanderburgh  
16 3525 Del Mar Heights Road, #138  
17 San Diego, CA 92130

18 Dated: February 9, 2010

19 Richard W. Wieking, Clerk  
20 By: Ronnie Hersler, Deputy Clerk  
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