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

RONALD C. PADILLA and EVA PADILLA,

Plaintiffs,

v.

ONE WEST BANK,

Defendant.

No. 10-04080 CW

ORDER DENYING
PLAINTIFFS'
MOTION TO AMEND
JUDGMENT

This case involves Defendant's attempt to foreclose on a deed of trust that is secured by Plaintiffs' residence. On December 20, 2010, the Court issued an order dismissing all of Plaintiffs' claims. Plaintiffs' claim under the Real Estate Settlement Procedures Act (RESPA) was dismissed with leave to amend; all other claims were dismissed without leave to amend because amendment would be futile. Plaintiffs were given fourteen days in which to file an amended complaint to remedy the deficiencies noted in the RESPA claim. Plaintiffs did not file an amended complaint within fourteen days and, on January 6, 2011, the Court dismissed the RESPA claim and closed the case.

On April 15, 2011, Ronald Padilla filed a letter requesting that the Court set aside its judgment on the ground that Defendant

1 did not offer to mediate pursuant to a bill introduced in the House
2 of Representatives known as the Foreclosure Mandatory Mediation Act
3 of 2010 which requires lenders of home loans to consent to
4 mandatory mediation. The Court construes this as a motion for
5 relief from the judgment under Federal Rule of Procedure 60.

6 Federal Rule of Civil Procedure 60(b) provides that, "upon
7 such terms as are just," a court may relieve a party from final
8 judgment for the following reasons:

9 (1) mistake, inadvertence, surprise, or excusable
10 neglect; (2) newly discovered evidence which by due
11 diligence could not have been discovered in time to move
12 for a new trial under Rule 59(b); (3) fraud,
13 misrepresentation, or other misconduct of an adverse
14 party; (4) the judgment is void; (5) the judgment has
15 been satisfied, released or discharged; (6) any other
16 reason justifying relief from operation of the judgment.

17 Fed. R. Civ. P. 60(b). A motion brought under Rule 60(b) is
18 similar to a motion under Rule 59 of the Federal Rules of Civil
19 Procedure, except that it may be asserted after the ten-day time
20 limit for motions brought under Rule 59. Rule 59(e) motions to
21 alter or amend the judgment are appropriate if the district court
22 "(1) is presented with newly discovered evidence, (2) committed
23 clear error or the initial decision was manifestly unjust, or
24 (3) if there is an intervening change in controlling law." School
25 Dist. No. 1J, Multnomah County, Oregon v. AcandS, Inc., 5 F.3d
26 1255, 1263 (9th Cir. 1993), cert. denied, 512 U.S. 1236 (1994).

27 Plaintiffs have not met the requirements of Rule 59 or 60.
28 They has not provided new evidence or shown that other
extraordinary circumstances justify reconsideration of the Court's
judgment. A bill introduced in the House of Representatives does

1 not qualify as an intervening change in controlling law.

2 Therefore, Plaintiffs' motion for relief from the judgment is
3 denied.

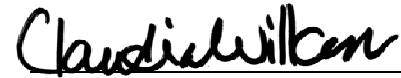
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5 IT IS SO ORDERED.

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7 Dated: 5/5/2011

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CLAUDIA WILKEN
United States District Judge

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

4 RONALD C. PADILLA et al,

5 Plaintiff,

6 v.

7 ONE WEST BANK et al,

8 Defendant.

Case Number: CV10-04080 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 May 5, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies)
12 in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in
13 the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's
14 office.

15 Eva K. Padilla
16 2555 Spyglass Hills Rd.
17 Livermore, CA 94551

18 Ronald C. Padilla
19 2555 Spyglass Hills Rd.
20 Livermore, CA 94551

21 Dated: May 5, 2011

22 Richard W. Wieking, Clerk
23 By: Nikki Riley, Deputy Clerk
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