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2 UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4 OAKLAND DIVISION
5

6 ESTRELLA G. ABALOS,
7 JOSE C. ABALOS and
8 DAVID-WYN MILLER: Plenipotentiary-
9 Judge (Witnessing),
10

11 Plaintiff,

12 vs.

13 BANK OF AMERICA HOME LOAN
14 SERVICING, L.P., AMERICAN
15 WHOLESALE LENDER; RECONTRUST
16 COMPANY, N.A.; BANK OF NEW YORK,
17 MELLON, AS TRUSTEE FOR THE
18 HOLDER OF THE SAMI II-2006-ARI, MTG
19 PASS-THROUGH CERTIFICATE;
20 MORTGAGE ELECTRONIC
21 REGISTRATION SYSTEMS, INC.,
22

23 Defendants.
24

Case No: C 11-03150 SBA

**ORDER DIRECTING PLAINTIFFS
TO FILE RESPONSE TO
DEFENDANTS' MOTION TO
DISMISS**

Docket 8

25 Plaintiffs, acting pro se, filed the instant mortgage fraud action in this Court on June
26 24, 2011. Dkt. 1. On August 8, 2011, Defendants filed a motion to dismiss under Federal
27 Rule of Civil Procedure 12(b)(6). Dkt. 15. Under Civil Local Rule 7-3(a), an opposition to
28 a motion must be filed within fourteen days of the date the motion was filed, and the reply
is due seven days thereafter. As such, Plaintiffs' response to the motion should have been
filed by no later than August 22, 2011. To date, Plaintiffs have not filed any response to
Defendants' motion.

This Court's Standing Orders warn that the failure to file a response to a motion may
be deemed to be a consent to the granting of the unopposed motion. Dkt. 12 at 5. As such,
it is well within the discretion of the Court to grant Defendants' motion as unopposed and
dismiss the action. See Fed. R. Civ. P. 41(b); Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir.

1 1995). Nevertheless, mindful of its obligation to first consider to less drastic alternatives,
2 the Court will afford Plaintiffs one further opportunity to respond to the pending motion.
3 Accordingly,

4 IT IS HEREBY ORDERED THAT:

5 1. Plaintiffs shall have until January 31, 2012 to file and serve their response
6 (i.e., either an opposition or a statement of non-opposition) to Defendants' Rule 12(b)(6)
7 motion to dismiss.

8 2. Plaintiffs' response shall comply in all respects with the Federal Rules of
9 Civil Procedure and the Court's Civil Local Rules including, without limitation, Civil Local
10 Rules 7-3 through 7-5.

11 3. **PLAINTIFFS ARE WARNED THAT THE FAILURE TO FILE A**
12 **RESPONSE BY THIS DEADLINE AND/OR TO COMPLY WITH THIS ORDER**
13 **OR ANY OTHER APPLICABLE PROCEDURAL RULES WILL RESULT IN THE**
14 **GRANTING OF THE PENDING MOTION AND THE DISMISSAL OF THIS**
15 **ACTION.**

16 4. In the event Plaintiffs timely file a response, Defendants may file a reply
17 seven days after the deadline for Plaintiffs' response.

18 5. The motion hearing scheduled for January 24, 2012 is VACATED.

19 6. The Case Management Conference currently scheduled January 24, 2012 is
20 CONTINUED to March 29, 2012 at 3:00 p.m. Prior to the date scheduled for the
21 conference, the parties shall meet and confer and prepare a joint Case Management
22 Conference Statement which complies with the Standing Order for All Judges of the
23 Northern District of California and the Standing Orders of this Court. The Case
24 Management Conference will be conducted by telephone. Plaintiffs shall assume
25 responsibility for filing the joint statement no less than seven (7) days prior to the
26 conference date. Plaintiffs shall set up the conference call with all the parties on the line
27 and call chambers at (510) 637-3559. NO PARTY SHALL CONTACT CHAMBERS
28 DIRECTLY WITHOUT PRIOR AUTHORIZATION OF THE COURT.

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IT IS SO ORDERED.

Dated: January 9, 2012

Saundra B. Armstrong
SAUNDRA BROWN ARMSTRONG
United States District Judge

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

4 ESTRELLA G ABALOS et al,

5 Plaintiff,

6 v.

7 BANK OF AMERICA et al,

8 Defendant.

9 _____/

Case Number: CV11-03150 SBA

10 **CERTIFICATE OF SERVICE**

11
12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on January 9, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
16 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
17 located in the Clerk's office.

18 Estrella G. Abalos
19 136 Saint Francis Boulevard
20 San Francisco, CA 94127

21 Jose C. Abalos
22 136 Saint Francis Boulevard
23 San Francisco, CA 94127

24 Dated: January 9, 2012

Richard W. Wieking, Clerk

25 By: LISA R CLARK, Deputy Clerk

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