

E-Filed 1/26/2010

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

TRACIE LYTHGOE, et al.,

Plaintiffs,

v.

BANK OF THE WEST, et al.,

Defendants.

Case Number C 07-2300 JF (HRL)

ORDER DENYING MOTION TO
FILE UNDER SEAL PLAINTIFFS'
REQUEST TO VACATE ORDER OF
DISMISSAL

[re: docket no. 73]

On October 26, 2009, the Court dismissed the above-captioned matter with prejudice. The Court retained jurisdiction to set aside the dismissal only if the agreed consideration for settlement was not delivered within ninety days. It is undisputed that the consideration has been delivered. Declaration of Patricia Gillette ¶¶ 2-4. Accordingly, at present this Court does not have jurisdiction to entertain Plaintiffs' request to vacate the dismissal or their related administrative motion to file that request under seal. *Kokkonen v. Guardian Life Insurance Co. of America*, 511 U.S. 375, 377-79 (1994). Plaintiffs' remedy would appear to be a motion to vacate the judgment of dismissal pursuant to Fed. R. Civ. P. 60(b). Accordingly, Plaintiffs' pending motions will be denied without prejudice. The Court expresses no opinion as to the merits of a prospective motion pursuant to Rule 60(b).

Case No. C 07-2300 JF (HRL)

ORDER DENYING MOTION TO FILE UNDER SEAL PLAINTIFFS' REQUEST TO VACATE ORDER OF
DISMISSAL

(JFLC1)

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2 IT IS SO ORDERED.

3 DATED: January 26, 2010

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6 JEREMY FOGEL
7 United States District Judge
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