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28E-FILED on 1/7/10

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

CHRISREY NERA, an Individual, and
CHARITO NERA, an Individual,

Plaintiffs,

v.

AMERICAN HOME MORTGAGE
SERVICING, INC., a Delaware Corporation;
SADEK, INC., a California Corporation; and
DOES 1 through 10, inclusive,

Defendants.

No. C-09-2025 RMW

ORDER VACATING SHOW CAUSE
HEARING

The January 8, 2010 show cause hearing, pursuant to the December 14, 2009 order to show cause why the action should not be dismissed for failure to prosecute, is hereby vacated.

Plaintiffs' response to the show cause order offers little explanation for the failures to comply with the court's local rules regarding the filing of opposition papers, participate in the preparation of the parties' joint case management conference statement, or appear at the hearings, other than to state that they resulted from "some inexplicable and inadvertent mistake." Plaintiffs have, however, filed a second amended complaint within the time set forth in the order, explained that they have been unable to locate and serve defendant Sadek, Inc., the lender in the underlying real estate transaction, and have accordingly filed a voluntary dismissal of the claims against Sadek. This leaves only the loan servicer, American Home Mortgage Servicing Inc., as a defendant, and it has already filed another motion to dismiss which is set for hearing on February 12, 2010. Under these

1 circumstances, and even though plaintiffs' showing is marginal, the court will not dismiss the action
2 at this time for plaintiffs' failure to prosecute.

3 Plaintiffs are put on notice, however, that any further failure to comply with the this court's
4 local rules, standing orders, or other orders may result in dismissal of the action.

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7 DATED: 1/7/10



RONALD M. WHYTE
United States District Judge

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