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E-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 No. C-09-2025 RMW CHARITO NERA, an Individual, Plaintiffs, ORDER VACATING SHOW CAUSE v. **HEARING** AMERICAN HOME MORTGAGE SERVICING, INC., a Delaware Corporation; SADEK, INC., a California Corporation; and DOES 1 through 10, inclusive, Defendants.

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

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United States District Court For the Northern District of California

1	circumstances, and even though plaintiffs' showing is marginal, the court will not dismiss the act	
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	RONALD M. WHYTE United States District Judge
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1	Notice of this document has been electronically sent to:		
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9	Counsel are responsible for distributing copies of this document to co-counsel that have not registered for e-filing under the court's CM/ECF program.		
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13	Dated: 1/7/10 TER		
14	Chambers of Judge Whyte		
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