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\*\*E-Filed 1/11/2010\*\*

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

JUAN CARLOS KAKOGUI,  
  
  Plaintiff,  
  
  v.  
  
AMERICAN BROKERS CONDUIT, et al.,  
  
  Defendants.

Case Number C 09-4841 JF (HRL)  
  
ORDER VACATING PLAINTIFF’S  
MOTION FOR LEAVE TO FILE  
FIRST AMENDED COMPLAINT;  
AND GRANTING PLAINTIFF’S  
MOTION FOR PERMISSION TO FILE  
ELECTRONICALLY  
  
[re: document nos. 16, 20 ]

Plaintiff Juan Carlos Kakogui, proceeding *pro se*, filed the instant action on August 4, 2009 in the Superior Court for the County of Santa Cruz. The action was removed to this Court on October 13, 2009. Plaintiff has filed a motion for permission to file papers in this case electronically. That motion is GRANTED.

Defendant Wells Fargo Bank dba America’s Servicing Company has filed a motion to dismiss the complaint for failure to state a claim, which is set for hearing on February 19, 2010. Plaintiff has filed a motion for leave to file a first amended complaint, which is set for hearing on March 12, 2010. Pursuant to Federal Rule of Civil Procedure 15(a), “[a] party may amend the party’s pleading once as a matter of course at any time before a responsive pleading is served.” A motion to dismiss does not constitute a responsive pleading within the meaning of Rule 15(a);

1 Plaintiff thus does not need leave of court to file an amended complaint. *See Crum v. Circus*  
2 *Circus Enterprises*, 231 F.3d 1129, 1130 n.3 (9th Cir. 2000). Accordingly, the hearing on  
3 Plaintiff's motion is VACATED. Plaintiff may file his first amended complaint forthwith.

4 IT IS SO ORDERED.

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6 DATED: 1/11/2010

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9 JEREMY FOGEL  
United States District Judge  
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1 Copies of Order served on:

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