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E-Filed 2/25/2010

**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)

ORDER¹ OVERRULING OBJECTION
TO MAGISTRATE JUDGE LLOYD'S
ORDER OF FEBRUARY 3, 2010

[re: document nos. 30, 32]

Plaintiff Juan Carlos Kakogui ("Kakogui"), proceeding *pro se*, filed the instant action on August 4, 2009 in the Santa Cruz Superior Court. Defendant Wells Fargo Bank dba America's Servicing Company ("Wells Fargo") removed the action on October 13, 2009. Kakogui filed the operative first amended complaint on January 14, 2010. Defendants Wells Fargo and US Bank National Association (collectively "Defendants") have filed a motion to dismiss that is set for hearing on March 26, 2010. The initial case management conference has been scheduled for the same date and time.

On January 29, 2010, Kakogui filed an application for an order shortening time to hear

¹ This disposition is not designated for publication in the official reports.

1 his motion for early discovery. Magistrate Judge Lloyd denied that motion in an order dated
2 February 3, 2010. On February 3, 2010 and February 18, 2010, Kakogui filed correspondence
3 directed to the Court; the Court will construe the correspondence as an objection to Judge
4 Lloyd's ruling.

5 Where, as here, the magistrate judge's ruling addresses a non-dispositive matter, the
6 district judge will modify or set aside "any portion of the magistrate judge's order found to be
7 clearly erroneous or contrary to law." Fed. R. Civ. P. 72(a); *see also* 28 U.S.C. § 636(b)(1)(A).

8 Judge Lloyd's order noted that Kakogui's motion to shorten time appeared to be driven
9 by Kakogui's perception that he needs to conduct discovery prior to the hearing on the motion to
10 dismiss and prior to the initial case management conference. The order explained that
11 Defendants' motion to dismiss tests the sufficiency of the allegations of the first amended
12 complaint and does not depend on any evidence that Kakogui might obtain during the discovery
13 process.² Judge Lloyd denied Kakogui's motion to shorten time because Kakogui had failed to
14 demonstrate good cause.

15 Kakogui asserts that this ruling was unfair because he needs discovery in order to obtain
16 evidence to support the allegations of his first amended complaint. Judge Lloyd's order
17 addresses Kakogui's desire to take early discovery, and in particular Kakogui's erroneous
18 perception that he needs evidence in order to oppose Defendant's motion to dismiss. Judge
19 Lloyd's ruling was not clearly erroneous or contrary to law. Accordingly, Kakogui's objections
20 will be overruled.

21 **ORDER**

22 The objections to Magistrate Judge Lloyd's Order of February 3, 2010 are
23 **OVERRULED.**

24
25 Dated: 2/25/2010

26 
27 _____
28 JEREMY FOGEL
United States District Judge

² In fact, the Court ordinarily does not consider evidence in determining a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6).

1 Copies of Order served on:
2

3 Plaintiff *pro se*:
4

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7 Defendants:

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