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**** E-filed October 20, 2010 ****

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BRET AND KIMBERLY LAWRENCE,

Plaintiffs,

v.

MITCHEL H. CAPLAN, an individual;
E*TRADE WHOLESALE LENDING
CORPORATION, a California corporation;
and DOES 1-10,

Defendants.

No. C10-02839 HRL

**ORDER (1) CONTINUING THE CASE
MANAGEMENT CONFERENCE AND
DENYING AS MOOT DEFENDANTS'
REQUEST TO APPEAR BY
TELEPHONE, (2) TERMINATING
DEFENDANTS' MOTION TO
DISMISS AND VACATING THE
OCTOBER 26 HEARING DATE, AND
(3) SETTING THE DEADLINE FOR
DEFENDANTS' RESPONSE TO
PLAINTIFFS' FIRST AMENDED
COMPLAINT**

[Re: Docket No. 11, 13 & 15]

_____ /

This suit arises out of plaintiffs Bret and Kimberly Lawrence's ("Plaintiffs") interest-only, adjustable-rate mortgage that they entered into with defendant E*Trade Wholesale Lending Corporation ("E*Trade") in December 2006. Plaintiffs claim that they entered into the mortgage as a result of E*Trade's alleged abusive lending practices. Plaintiffs' thus filed suit against E*Trade and its former Chief Executive Officer, Mitchel H. Caplan ("Caplan") (collectively, "Defendants"), on June 28, 2010 for violation of the Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968 ("RICO"), the Truth in Lending Act, 15 U.S.C. §§ 601 et seq. ("TILA"), California's False Advertising Law, CAL. BUS. & PROF. CODE § 17500 ("FAL"), and California's

United States District Court
For the Northern District of California

1 Unfair Competition Law, CAL. BUS. & PROF. CODE § 17200 (“UCL”), and for breach of the implied
2 covenant of good faith and fair dealing. (Docket No. 1.)

3 On September 17, Defendants filed a motion to dismiss Plaintiffs’ complaint pursuant to
4 Federal Rule of Civil Procedure 12(b)(6). (Docket No. 11.) Eighteen days later on October 5,
5 rather than opposing Defendants’ motion, Plaintiffs filed a First Amended Complaint as a matter of
6 course. (Docket No. 13.) No further briefing on Defendants’ motion has been filed, nor has any
7 notice of Plaintiffs’ non-opposition. The motion is currently scheduled to be heard on October 26.
8 A case management conference is also currently scheduled for the same day, and Defendants’ filed a
9 request to appear at it by telephone. (Docket No. 15.)

10 Federal Rule of Civil Procedure 15(a) provides that “[a] party may amend its pleading once
11 as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a
12 responsive pleading is required, 21 days after service of a responsive pleading or 21 days after
13 service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” FED. R. CIV. P. 15(a)(1).

14 Defendants filed a motion to dismiss pursuant to Rule 12(b)(6). Plaintiffs filed their First
15 Amended Complaint eighteen days later, within the 21-day window provided by Rule 15(a)(1)(B).
16 Thus, Plaintiffs’ First Amended Complaint was timely filed and they had the right to file it as a
17 matter of course.

18 In light of the filing of Plaintiffs’ First Amended Complaint, the case management
19 conference, currently scheduled for October 26, 2010, is CONTINUED to December 14, 2010, and
20 Defendants’ motion to appear by telephone at it is DENIED AS MOOT. In addition, Defendants’
21 motion to dismiss is TERMINATED and the October 26 motion hearing is VACATED. Defendants
22 shall file either an answer to Plaintiffs’ First Amended Complaint or any motion to dismiss within
23 21 days from the date of this order.

24 **IT IS SO ORDERED.**

25 Dated: October 20, 2010

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28 HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

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C10-02839 HRL Notice will be electronically mailed to:

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Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court's CM/ECF program.