

\*\*E-Filed 11/22/2010\*\*

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

MANUEL DE JESUS, an individual

Plaintiff,

v.

WACHOVIA now doing business as WELLS  
FARGO BANK, N.A., CAL-WESTERN  
RECONVEYANCE CORPORATION and DOES  
1 through 50, inclusive,

Defendants.

Case Number 5:10-cv-04212-JF (HRL)

ORDER<sup>1</sup> GRANTING MOTION TO  
DISMISS WITH LEAVE TO AMEND

[Re: Docket No. 9 ]

Defendants Wachovia, et al. (“Wachovia”) move to dismiss all six claims for relief in Plaintiff’s complaint. Plaintiff alleges violations of the Real Estate and Settlement Procedures Act, 12 U.S.C. § 2605 (“RESPA”); the Truth in Lending Act, 15 U.S.C. § 1601; Cal. Bus. & Prof. Code § 17200; and related claims.

As of the date of this order, Plaintiff has not filed opposition papers. However, Plaintiff filed an amended complaint on November 3, 2010. Federal Rule of Civil Procedure 15(a)(1) provides that “a party may amend its pleading once as a matter of course within (a) 21 days after

<sup>1</sup> This disposition is not designated for publication in the official reports.

1 serving it, or (b) if the pleading is one to which a responsive pleading is required, 21 days after  
2 service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f),  
3 whichever is earlier.” Plaintiff’s amended complaint thus is untimely. Wachovia filed its  
4 motion to dismiss and motion to strike portions of Plaintiff’s original complaint on September  
5 24, 2010. If Plaintiff sought to amend his complaint as a matter of course, the amended pleading  
6 should have been filed on or before October 15, 2010.

7 Accordingly, Plaintiff’s first amended complaint will be stricken. Because the instant  
8 motion appears well-taken and is unopposed, the motion will be granted with leave to amend.  
9 Any amended pleading shall address the arguments made in Wachovia’s motion and shall be  
10 filed within twenty (20) days after the date of this order.

11 **ORDER**

12 Good cause therefor appearing, IT IS HEREBY ORDERED THAT

- 13 (1) Defendants’ motion to dismiss Plaintiff’s original complaint is GRANTED,  
14 WITH LEAVE TO AMEND;
- 15 (2) any amended pleading shall be filed within twenty (20) days after the date of this  
16 order;
- 17 (3) Defendants’ motion to strike portions of Plaintiff’s original complaint is  
18 terminated as moot;
- 19 (4) Defendants’ motion to dismiss Plaintiff’s first amended complaint is terminated  
20 as moot; and
- 21 (5) Defendants’ motion to strike Plaintiff’s first amended complaint is GRANTED as  
22 set forth above.

23  
24 DATED: November 22, 2010

25   
26 JEREMY FOGEL  
27 United States District Judge  
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