

1 **E-Filed 2/1/2011**

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8 **IN THE UNITED STATES DISTRICT COURT**

9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

10 **SAN JOSE DIVISION**

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12 MANUEL DE JESUS, an individual

13 Plaintiff,

14 v.

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

18 Defendants.

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

ORDER¹ GRANTING MOTION TO
DISMISS WITH LEAVE TO AMEND;
VACATING HEARING DATE; AND
CONTINUING CASE
MANAGEMENT CONFERENCE

[Re: Docket No. 27]

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20 Defendants Wachovia, *et al.* (“Wachovia”) move to dismiss all claims in Plaintiff’s first
21 amended complaint (“FAC”) pursuant to Fed. R. Civ. P. 12(b)(6).² The Court concludes that this
22 motion is appropriate for determination without oral argument and will vacate the hearing date of
23 February 4, 2011. *See* Civ. L.R. 7-1(b).

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

26 ² Plaintiff originally filed the FAC on November 3, 2010, but it was stricken by the
27 Court for failure to amend pursuant to Fed. R. Civ. P. 15(a). Plaintiff re-filed the FAC on
28 November 22, 2010.

1 Under this Court's Civil Local Rules, Plaintiff's opposition was due at least twenty-one
2 days before the noticed hearing date of February 4, 2011—here, not later than January 14, 2011.
3 See Civ. L.R. 7-3(a). As of the date of this order, Plaintiff has not filed opposition papers.
4 Because the instant motion appears well-taken and is unopposed, the motion will be granted,
5 with leave to amend. Any amended pleading shall be filed within twenty (20) days after the date
6 of this order. As the Court directed in its previous dismissal order, any amended pleading must
7 address the arguments made by Wachovia in its moving papers. Because the instant motion is
8 the second that Plaintiff has failed to oppose, further leave to amend will not be granted without
9 a substantial showing of good cause.

10 **ORDER**

11 For good cause shown,

- 12 (1) the motion to dismiss Plaintiff's First Amended Complaint is GRANTED, WITH
13 LEAVE TO AMEND;
- 14 (2) Defendants' request for judicial notice is DENIED as moot
- 15 (3) the motion to strike portions of Plaintiff's First Amended Complaint also is
16 DENIED as moot;
- 17 (4) any amended pleading shall be filed within twenty (20) days after the date of this
18 order;
- 19 (5) the hearing date of February 4, 2011 is VACATED; and
- 20 (6) the Case Management Conference set for February 4, 2011 is CONTINUED to
21 April 22, 2011 at 10:30 a.m.

22 DATED: February 1, 2011

23 
24 JEREMY FOGEL
25 United States District Judge