

E-Filed 3/24/2011

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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)

ORDER¹ DISMISSING ACTION
WITH PREJUDICE

This action arises out of a residential mortgage transaction involving real property located at 1224 Doncaster Way San Jose, California 95127 (“the Property”). First Amended Complaint (“FAC”)² ¶ 1. Plaintiff Manuel De Jesus owns and resides at the Property. *Id.* In

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

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

1 July 2007, he obtained a \$366,000 home loan from World Savings Bank, FSB.³ Exh. E to
2 Defendants' Request for Judicial Notice ("RJN"), Dkt. 29.⁴ Subsequently, he defaulted on his
3 loan payments, and a notice of default was recorded in the Santa Clara County Recorder's
4 Office. RJN Exh. F, Dkt. 29. On August 18, 2010, Plaintiff filed the instant action in Santa
5 Clara Superior Court, asserting claims for (1) breach of the implied covenant of good faith and
6 fair dealing; (2) quiet title; and (3) breach of fiduciary duty. The action was removed to this
7 Court on September 17, 2010. Notice of Removal from Superior Court of California, Santa
8 Clara County, Dkt. 1.

9 On December 3, 2010, Defendants Wachovia, *et al.* ("Wachovia") moved to dismiss the
10 FAC for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6).⁵ After Plaintiff failed to
11 oppose the motion, the Court dismissed the FAC with leave to amend and directed Plaintiff to
12 file an amended pleading within twenty days from the date of the order.⁶ The Court indicated
13 that further leave to amend would not be granted without a substantial showing of good cause, as
14 Plaintiff had failed to oppose Wachovia's motions to dismiss on two occasions. Despite the
15 Court's directive, Plaintiff did not file an amended complaint in the time provided. Accordingly,
16 the case will be dismissed.

17 **ORDER**

18 IT IS HEREBY ORDERED that the instant action is dismissed with prejudice.
19 Wachovia's request for judicial notice is GRANTED as to Exs. D-F. The Clerk of the Court
20 shall close the file.

21 _____
22 ³ World Savings Bank, FSB was renamed Wachovia Mortgage, FSB on January 1, 2008.
23 In November 2009, Wachovia Mortgage, FSB was merged into Wells Fargo Bank, N.A.. RJN
24 Exh. D.

25 ⁴ Pursuant to Fed. R. Evid. 201(b), the Court may take judicial notice of facts that are
26 "capable of accurate and ready determination by resort to sources whose accuracy cannot
27 reasonably be questioned."

28 ⁵ Motion to Dismiss First Amended Complaint, Dkt. 27.

⁶ Order Granting Motion to Dismiss with Leave to Amend, Vacating Hearing Date, and
Continuing Case Management Conference, Dkt. 30.

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DATED: March 24, 2011



JEREMY FOGEL
United States District Judge