

United States District Court
For the Northern District of California

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

MARIANNE PRETSCHER-JOHNSON,)	Case No. 5:12-cv-05817-PSG
)	
Plaintiff,)	ORDER RE: PLAINTIFF’S SECOND
v.)	AMENDED COMPLAINT
)	
AURORA BANK FSB, et al.,)	(Re: Docket Nos. 10 and 26)
)	
Defendants.)	

Before the court are Defendants’ respective motions to dismiss.¹ The motions as submitted challenge Plaintiff’s first amended complaint. Rather than oppose the motion, Plaintiff countered with a second amended complaint without seeking leave of the court.² Weighing the equities of this unusual procedural response, the court dismissed the FAC and ordered Plaintiff to show cause why the case should not be dismissed for failure to prosecute.³ Plaintiff responded with an explanation for her failure to appear or oppose Defendants’ motion.⁴ The court then dissolved the OSC and elected to consider the merits of Plaintiff’s SAC in light of the briefing submitted without

¹ See Docket Nos. 10 and 26.
² See Docket No. 18.
³ See Docket No. 29.
⁴ See Docket No. 35.

1 oral argument.⁵

2 Because of the mismatch between the SAC and the arguments of Defendants' motion, and
3 upon further reflection, at this time the court declines to dismiss the SAC.⁶ Within 14 days,
4 Defendants shall either answer the SAC or renew its motion to dismiss. Any renewed motion
5 should specifically address the SAC. If Defendants file such a motion, Plaintiff shall file any
6 opposition within 7 days. If any such opposition is filed, Defendants shall file any reply within
7 7 days. The court will resolve any motion on the papers and without oral argument.⁷

8 **IT IS SO ORDERED.**

9 Dated: February 21, 2014

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12 PAUL S. GREWAL
13 United States Magistrate Judge
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23 ⁵ See Docket No. 37 at 1; see also Civil L.R. 7-1(b) ("In the Judge's discretion, or upon request by
24 counsel and with the Judge's approval, a motion may be determined without oral argument or by
25 telephone conference call.").

26 ⁶ Cf. *Fleming v. Coverstone*, Case No. 08-cv-355-WQH-NLS, 2008 WL 4628397, at *2
27 (S.D. Cal. Oct. 17, 2008) ("The Court has reviewed the FAC and the proposed SAC. The SAC
28 contains significant additions and changes to the factual allegations in the FAC. In light of the
significant changes in the SAC, the Court denies the Motion to Strike and Motion to Dismiss the
FAC as moot.").

⁷ The court will then consider the motion on the papers pursuant to Civil L.R. 7-1(b).
See *supra* note 5.