Plaintiffs Edwin and Brandie Hannon ("Plaintiffs"), with the assistance of counsel, filed their amended complaint in Monterey County Superior Court on November 6, 2014. ECF No. 1-1 Southwest, N.A., f/k/a Wachovia Mortgage, FSB, f/k/a World Savings Bank, FSB ("Wells Fargo") received service of process on November 7, 2014. ECF No. 1 at 5. On December 8, 2014, Wells

inter alia, that Plaintiffs' claims are barred by the doctrine of judicial estoppel and by the applicable statutes of limitations. ECF No. 11. Pursuant to Civil Local Rule 7-3(a), Plaintiffs'

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Opposition to the Motion to Dismiss was due on January 20, 2015. Plaintiffs filed none. As a result, on March 16, 2015, the Court issued an Order for Plaintiffs to show cause why this case should not be dismissed for failure to prosecute. ECF No. 15.

Pursuant to the Court's Order to Show Cause, Plaintiffs filed a response on March 26, 2015. ECF No. 17. In that response, Plaintiffs' counsel explained that he had experienced heart problems beginning in November 2014. Id. at 2. While the Court appreciates the medical challenges facing Plaintiffs' counsel, the Court notes that Plaintiffs' counsel says he realized he had not filed an Opposition on February 16, 2015—a full month before the Court issued its Order to Show Cause. Id. at 4. In that time period, Plaintiffs' counsel never alerted the Court of his medical condition or asked for an extension of time to file an Opposition, as he was obligated to do.

In light of the foregoing, the Court declines to dismiss Plaintiffs' lawsuit for failure to prosecute and hereby VACATES the hearing on the Order to Show Cause set for April 2, 2015, at 1:30 p.m. However, pursuant to Civil Local Rule 7-1(b), the Court hereby GRANTS Wells Fargo's Motion to Dismiss with leave to amend and VACATES the hearing on the Motion to Dismiss set for April 9, 2015, at 1:30 p.m. Plaintiffs are hereby on notice of the alleged deficiencies with their Complaint that Wells Fargo has identified in its Motion to Dismiss. Should Plaintiffs elect to file an amended Complaint, Plaintiffs shall do so within thirty (30) days of the date of this Order. Failure to meet the thirty-day deadline to file an amended Complaint or failure to cure the deficiencies identified by Wells Fargo in its Motion to Dismiss will result in a dismissal with prejudice of Plaintiffs' claims. Plaintiffs may not add new causes of action or parties without leave of the Court or stipulation of the parties pursuant to Rule 15 of the Federal Rules of Civil Procedure.

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<sup>&</sup>lt;sup>1</sup> January 19, 2015, was a federal holiday.

## United States District Court Northern District of California

The Court hereby CONTINUES the initial case management conference set for April 9, 2015, at 1:30 p.m. to June 17, 2015, at 2:00 p.m. IT IS SO ORDERED. LUCY H. KOH O United States District Judge Dated: March 30, 2015 

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