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NOT FOR PUBLICATION

MEMORANDUM & ORDER
09 CV 4729 (MKB)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOSE LUIS CALLEJA,

Plaintiff,

v.

NEW YORK MORTGAGE COMPANY, LLC,
WELLS FARGO BANK, NA, as Trustee for the
Asset Backed Funding Corporation Asset
Backed Certificates Series 2007-NC1,
JOHN DOE AND JANE DOE,

Defendants.
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MARGO K. BRODIE, United States District Judge:

On November 2, 2009, plaintiff Jose Luis Calleja filed this action for fraud and breach of contract. Defendant Wells Fargo Bank, NA is the only defendant that was properly served with the complaint. On March 30, 2010 and February 17, 2011, defendant Wells Fargo Bank, NA moved to dismiss the complaint. (Docket Entries 13 and 27.) On October 11, 2012, Plaintiff wrote to the Court asking that the complaint be voluntarily dismissed. (Docket Entry 30.)

Rule 41(a)(2) provides, in relevant part, that “an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2). The decision to grant dismissal under Rule 41(a)(2) is left to the discretion of the district court. *United States v. Cathcart*, 291 F. App’x 360, 361 (2d Cir. 2008) (“dismissals are at the district court’s discretion[.]”).

In view of the motions to dismiss filed by defendant Wells Fargo Bank, NA, as well as Plaintiff's request that the case be dismissed, the Court hereby orders that the case be dismissed without prejudice.

SO ORDERED.

/S/ Judge Margo K. Brodie


MARGO K. BRODIE
United States District Judge

Dated: October 19, 2012
Brooklyn, New York