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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DANIEL-ADAM BORSOTTI,
Plaintiff,

v.

JAY BRAY, et al.,
Defendants.

) Case No. CV 16-7603 FMO (JCx)

) **ORDER**

Having reviewed the docket and the various pending matters, the court concludes as follows:

I. MOTIONS TO DISMISS.

On November 11, 2016, defendants Quality Loan Service Corporation and Annia Quintana filed a Motion to Dismiss Plaintiff's Complaint (Dkt. 14, "Quality Motion"). On the same date, defendant JPMorgan Chase Bank, N.A. also filed a Motion to Dismiss (Dkt. 18, "JPMorgan Motion"). On November 16, 2016, defendant Nationstar Mortgage LLC filed its Motion to Dismiss (Dkt. 28, "Nationstar Motion"). On December 8, 2016, defendant Jamie Dimon filed his Motion to Dismiss (Dkt. 52, "Dimon Motion"). Finally, on December 16, 2016, defendants Jay Bray and Robert Stiles filed a Motion to Dismiss and Joinder in Pending Motion to Dismiss by Nationstar Mortgage LLC (Dkt. 54, "Bray Motion").

1 The Quality Motion was noticed for hearing on December 15, 2016, (see Dkt. 14, Quality
2 Motion), while the Nationstar Motion was initially noticed for hearing on December 19, 2016, but
3 was renoticed to December 15, 2016, pursuant to a Notice of Deficiencies. (See Dkts. 28, 31, 35).
4 Due to the intervening holiday, the December 15, 2016, hearing date required plaintiff to file his
5 oppositions to the motions no later than November 28, 2016. See Local Rule 7-9.

6 Plaintiff did not file any opposition to the Quality Motion or the Nationstar Motion by the
7 November 28, 2016, deadline. On December 8, 2016, the court continued the hearing dates on
8 the Quality and Nationstar motions to January 12, 2017, (see Dkt. 48), which is the hearing date
9 for the remaining motions to dismiss. (See Dkt. 18, JPMorgan Motion; Dkt. 52, Dimon Motion;
10 Dkt. 54, Bray Motion). The January 12, 2017, hearing date required plaintiff to file oppositions to
11 the motions no later than December 22, 2016. See Local Rule 7-9. As of the filing date of this
12 Order, plaintiff has not filed any opposition to the pending motions. Accordingly, the court will
13 vacate the hearing date and grant the pending motions to dismiss. See Local Rule 7-12.

14 Moreover, many motions to dismiss can be avoided if the parties confer in good faith (as
15 required by Local Rule 7-3), especially for perceived defects in a complaint, answer or
16 counterclaim that could be corrected by amendment. See Eminence Capital, LLC v. Aspeon, Inc.,
17 316 F.3d 1048, 1052 (9th Cir. 2003) (where a motion to dismiss is granted, a district court should
18 provide leave to amend unless it is clear that the complaint could not be saved by any
19 amendment). Additionally, a party has the right to amend the complaint "once as a matter of
20 course[.]" Fed. R. Civ. P. 15(a)(1). Even after a complaint has been amended or a responsive
21 pleading has been served, the Federal Rules of Civil Procedure provide that "[t]he court should
22 freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). The Ninth Circuit
23 requires that this policy favoring amendment be applied with "extreme liberality." Owens v. Kaiser
24 Found. Health Plan, Inc., 244 F.3d 708, 712 (9th Cir. 2001); Morongo Band of Mission Indians
25 v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990).

26 Given the policy favoring amendment of complaints and that plaintiff is, in effect, entitled
27 to amend the complaint, "once as a matter of course," see Fed. R. Civ. P. 15(a)(1), the court will
28 dismiss plaintiff's Complaint with leave to amend. In preparing the First Amended Complaint,

1 plaintiff shall carefully evaluate the contentions set forth in defendants' Motions. The court expects
2 that defendants will agree to any amendment(s) that will cure the alleged defect(s).

3 II. COMPLIANCE WITH LOCAL RULES AND PLAINTIFF'S REFUSAL TO ACCEPT
4 SERVICE OF DOCUMENTS.

5 On November 15, 2016, after having several orders returned as undeliverable, the court
6 issued an order directing pro se plaintiff Daniel-Adam Borsotti ("plaintiff") to file a notice of address
7 and telephone number no later than November 30, 2016. (See Dkt. 27, Court's Order of
8 November 15, 2016). However, the Court's Order of November 15, 2016 (along with other filings)
9 was also returned as undeliverable. (See, e.g., Dkt. 37-41).

10 On December 7, 2016, plaintiff filed a Notice of Change of Address ("Notice") identifying
11 his address as "c/o general delivery, Santa Clarita, California." (See Dkt. 47, Notice at 1). Plaintiff,
12 however, did not provide a phone number. (See, generally, id.). On the same date that he filed
13 his Notice, plaintiff also filed a Request for Enlargement of Time to Respond to Defendants [sic]
14 Motion to Dismiss ("Request"), (see Dkt. 46, "Request"), which is now moot in light of the
15 foregoing.¹ Because it appears that plaintiff is receiving the documents filed in this action, (see,
16 e.g., id.), but, inexplicably, refusing to accept delivery of the documents, (see, e.g., Dkt. 36), the
17 court will assume that he is aware of all filings and deadlines set forth in this action. Plaintiff is
18 admonished that the court will not be inclined to grant future extensions of time due to plaintiff's
19 failure to receive notice of a deadline or filing.

20 Based on the foregoing, IT IS ORDERED THAT:

- 21 1. The hearing set for January 12, 2017, is hereby **vacated**.
 - 22 2. Defendants' Motions to Dismiss (**Document Nos. 14, 18, 28, 54, 52**) are **granted**.
 - 23 3. Plaintiff's Complaint is **dismissed with leave to amend**.
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27 ¹ In his Request, plaintiff claims that the failure to file timely oppositions to the motions to
28 dismiss is due to the "ill-health of [his] paralegal[.]" (See Dkt. 46, Request at 2). He states that
he "has aligned with another paralegal group, and now believes he can respectfully and timely
comply with all the rules of this . . . court[.]" (id.).

1 4. If plaintiff still wishes to pursue this action, he is granted until **January 24, 2017**, to file
2 a First Amended Complaint attempting to cure, to the extent he believes is warranted by existing
3 law, the alleged defects outlined in defendants' motions.

4 5. The First Amended Complaint must be labeled "First Amended Complaint," filed in
5 compliance with Local Rule 3-2 and contain the case number assigned to the case, i.e., Case No.
6 CV 16-7603 FMO (JCx). In addition, plaintiff is informed that the court cannot refer to a prior
7 pleading in order to make his First Amended Complaint complete. Local Rule 15-2 requires that
8 an amended pleading be complete in and of itself without reference to any prior pleading. This
9 is because, as a general rule, an amended pleading supersedes the original pleading. See
10 Ramirez v. Cnty. of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) ("It is well-established
11 in our circuit that an amended complaint supersedes the original, the latter being treated thereafter
12 as non-existent. In other words, 'the original pleading no longer performs any function[.]'"
13 (citations and internal quotation marks omitted).

14 6. Plaintiff is cautioned that failure to timely file a First Amended Complaint may result in
15 this action being dismissed without prejudice for failure to prosecute and/or failure to comply with
16 a court order. See Fed. R. Civ. P. 41(b); Link v. Wabash R.R. Co., 370 U.S. 626, 629-30, 82 S.Ct.
17 1386, 1388 (1962).

18 7. Defendants shall file their Answers to the First Amended Complaint or motions pursuant
19 to Fed. R. Civ. P. 12 no later than **February 14, 2017**.

20 8. In the event defendants wish to file another motion to dismiss, then plaintiff and counsel
21 for the parties shall, on **February 7, 2017, at 10:00 a.m.**² meet and confer to discuss defendants'
22 motion(s) to dismiss. Defendants' motion(s) must include copies of all meet and confer letters as
23 well as a declaration that sets forth, in detail, the entire meet and confer process (i.e., when and
24 where it took place, how long it lasted and the position of each party or attorney with respect to
25 each disputed issue that will be the subject of the motion). Failure to include such a declaration
26 will result in the motion(s) being denied.

27 _____
28 ² Plaintiff and counsel may agree to meet and confer at another time without seeking court approval for such an agreement.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

REQUEST FOR COPIES AND/OR
RETRIEVAL OF RECORDS

RESET FORM

Date

1-6-2017

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3. MAILING ADDRESS (Include law firm or agency name, if applicable)		4. Phone Number	5. Case Number
			2:16-cv-07603-FMO-JC
		6. Case Name Daniel-Adam Borsoiti v. Jay Bray et al	

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Receipt date: 8/21/2017

Case number: 2:13-cv-01170-117-001

Case type: 2017

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Case type	100.00
Case type fee	100.00
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