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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Thomas E. Russell,

No. CV 11-01463-PHX-FJM

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Plaintiff,

ORDER

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vs.

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OneWest Bank FSB, et al.,

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Defendants.

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The Clerk entered default against defendant Fairway Independent Mortgage Corporation ("Fairway") on October 17, 2011 (doc. 27). Plaintiff failed to file a motion for default judgment. On January 11, 2012, Fairway filed a motion to set aside entry of default (doc. 45), which plaintiff does not oppose (doc. 50). Fairway also filed a motion to dismiss (doc. 47), to which plaintiff responded (doc. 50) and Fairway replied (doc. 51).

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Fairway seeks dismissal based on plaintiff's failure to comply with our order of January 6, 2011, ordering plaintiff to show good cause why the case should not be dismissed for lack of prosecution. (Doc. 44). But Fairway's motion to set aside entry of default makes our January 6 order moot.

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IT IS ORDERED GRANTING Fairway's unopposed motion to set aside entry of default (doc. 45).

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IT IS FURTHER ORDERED DENYING Fairway's motion to dismiss (doc. 47) as premature, without prejudice to filing a new motion to dismiss on the merits.

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DATED this 9th day of March, 2012.

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Frederick J. Martone

Frederick J. Martone
United States District Judge