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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

EDWARD GOMEZ,)
)
Plaintiff,)
)
vs.)
)
WORLD SAVINGS BANK FSB,)
et al.,)
)
Defendants.)
_____)

1:10-cv-01463-- -SMS
**ORDER FOR PRO SE PLAINTIFF
TO PERSONALLY APPEAR AND
SHOW CAUSE WHY CASE SHOULD
NOT BE DISMISSED FOR LACK
OF PROSECUTION**
**ORDER DIRECTING CLERK TO
SERVE PRO SE PLAINTIFF BY
MAIL**

Date: 1/11/12
Time: 10:00 a.m.
Ctrm: One ~ 8th Floor

On November 17, 2011, this Court issued an order to show cause (Doc. 29) why sanctions should not be imposed for failure to comply with the Court's order of September 14, 2011 (Doc. 27), requiring the parties to complete and file a Consent or Decline form within thirty (30) days. The Court's order of November 17, 2011, afforded the parties an opportunity to file a written response to the order to show cause -OR- simply file the required Consent/Decline form, within ten (10) days or by November 27, 2011.

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1 On November 23, 2011, Wells Fargo Bank, N.A., filed a Consent
2 form (Doc. 31), together with a response (Doc. 30) to the order to
3 show cause.

4 On November 29, 2011, Cal-Western Reconveyance Corporation
5 filed a Consent form (Doc. 32), together with a declaration of non-
6 monetary status (Doc. 33).

7 To date, pro se plaintiff Edward Gomez has not responded to
8 the Court's orders of September 14, 2011 or November 17, 2011, and
9 is therefore not diligently prosecuting this case.

10 The Court possesses the discretionary authority to dismiss an
11 action based on plaintiff's failure to prosecute diligently. Fed.
12 R. Civ. P. 41(b); Schwarzer, Tashima & Wagstaffe, Fed. Civ. Proc.
13 Before Trial ¶ 16:431 (1997). Unreasonable delay by plaintiff is
14 sufficient to justify dismissal, even in the absence of actual
15 prejudice to the defendant (Moore v. Telfon Communications Corp.,
16 589 F.2d 959, 967-68 (9th Cir. 1978)) since a presumption of injury
17 arises from the occurrence of unreasonable delay. Fidelity
18 Philadelphia Trust Co. v. Pioche Mines Consol., Inc., 587 F.2d 27,
19 29 (9th Cir. 1978). Plaintiff then has the burden of showing
20 justification for the delay and, in the absence of such showing,
21 the case is properly dismissed for failure to prosecute. Nealey v.
22 Transportation Maritima Mexicana, S.A., 662 F.2d 1275 (9th Cir.
23 1980).

24 THEREFORE, IT IS HEREBY ORDERED:

25 1. That this matter is set for hearing on January 11, 2012
26 at 10:00 a.m. in Courtroom No. 1 on the Eighth Floor of the Robert
27 E. Coyle United States Courthouse, 2500 Tulare Street, Fresno, CA,
28 93721, before the Honorable Sandra M. Snyder, United States

1 Magistrate Judge, for consideration of dismissal of this action for
2 lack of prosecution by plaintiff.

3 2. **Pro se plaintiff Edward Gomez must personally appear** at
4 the hearing on January 11, 2012 at 10:00 a.m. in Courtroom No. 1 on
5 the Eighth Floor of the Robert E. Coyle United States Courthouse,
6 2500 Tulare Street, Fresno, CA, 93721, while defense counsel shall
7 appear telephonically via a single conference call to chambers at
8 (559) 499-5690.

9 3. If plaintiff has any reasons why this action should not
10 be dismissed, they shall be submitted by sworn declaration of facts
11 by **December 28, 2011**, to which plaintiff may append a supporting
12 memorandum of law, to include (A) an explanation of the lack of
13 activity in this case, and (B) shall list each specific step
14 plaintiff plan to take to prepare this case for trial.

15 4. Defendants may file a declaration or memorandum in
16 response thereto, but are not required to do so, by **January 4,**
17 **2012.**

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19 IT IS SO ORDERED.

20 **Dated: November 30, 2011**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE

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