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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARICELA VERDE HERNANDEZ,

Plaintiff,

v.

BANK OF AMERICA, COUNTRYWIDE,

Defendants.

1:11-cv-00001 OWW JLT

ORDER DIRECTING PLAINTIFF'S
COUNSEL TO SERVE THIS ORDER
ON PLAINTIFF AND GRANTING
ADDITIONAL TIME TO FILE
OPPOSITION OR NOTICE OF
OPPOSITION

I. INTRODUCTION

This action concerns real property located at 6651 Via Del Mar, Bakersfield, California 93307 ("Subject Property"). It appears from the Complaint that Plaintiff, Maricela Verde Herndandez, purchased the property on or about June 23, 2006 financed through a loan from "Countrywide, Bank of America." Doc. 1, Compl. ¶ 12. At some point, Plaintiff "began experiencing financial difficulties," and requested a loan modification from her lender. *Id.* at ¶¶ 14-15. The lender requested additional information regarding Plaintiff's modification request. *Id.* at ¶ 17. On June 14, 2010, Bank of America informed Plaintiff that it had "completed its review" of her modification request, but the results of that review are not

1 articulated in the complaint. *Id.* at ¶ 18. Plaintiff appears to
2 allege that she and Defendant entered into an agreement to modify
3 the loan, but the property was sold at auction on June 16, 2010.
4 *See id.*

5 Plaintiff, through counsel, requested rescission of the
6 sale, which request was apparently denied. *See id.* at ¶ 22.
7 Subsequently, Plaintiff filed a Complaint for Damages in the
8 Superior Court for the "County of Bakersfield," which was
9 accepted for filing by the Superior Court, Metropolitan Division,
10 County of Kern, on December 8, 2010. The Complaint alleges
11 twelve state causes of action¹ and various violations of federal
12 law. *See Compl.* at ¶ 19 (alleging violations of "12 U.S.C., 12
13 C.F.R., 15 U.S.C."); 4:27-5:4 (alleging a violation of the UCL
14 "predicated upon Violations of [the Truth in Lending Act
15 ("TILA")]"); 17:15 (seeking relief under TILA).

16 On January 3, 2011, Defendant BAC Home Loans, erroneously
17 sued as Bank of America, Countrywide, timely and properly removed
18 pursuant to 28 U.S.C. § 1446(a), based upon federal question
19 jurisdiction. Doc. 1. Defendant subsequently noticed for
20 hearing on March 14, 2011 a motion for judgment on the pleadings,
21 or in the alternative for summary judgment. Doc. 8. That

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25 ¹ 1. Breach of Contract; 2. Violation of California Business & Professions
26 Code §§ 17200-17500, et seq.; 3. Breach of the Covenant of Good Faith and Fair
27 Dealing; 4. Fraud and Intentional Misrepresentation of Fact; 5. Negligent
28 Misrepresentation of the Fact; 6. Unlawful Business Practices (Cal. Fin. Code
§ 22302); 8. Cancellation and Vacation of Foreclosure Sale; 9. Quiet Title;
10. Fraudulent Inducement; 11. Intentional Infliction of Emotional Distress;
12. Negligent Infliction of Emotional Distress.

1 hearing was continued to March 21, 2011. Doc. 10. Notice of the
2 new hearing date was served by U.S. Mail on Plaintiff's counsel.
3 See Docket Entry Dated 1/27/11. Plaintiff, who is represented by
4 counsel, Emeka Godfrey Onwualu, failed to file any opposition.
5 See Doc. 13. A March 15, 2010 minute order took the matter off
6 calendar and submitted the motion for judgment on the pleadings
7 for decision on the papers. Doc. 14. The minute order was
8 served via U.S. Mail on Plaintiff's counsel. See Docket Entry
9 Dated 3/15/11.
10

11 Defendant's motion for summary judgment directs the court's
12 attention to evidence suggesting Defendant is entitled to
13 judgment on every claim in the case. To defeat a properly made
14 motion for summary judgment, the non-moving party must show there
15 exists a genuine dispute (or issue) of material fact. *Anderson*
16 *v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986)). A fact is
17 "material" if it "might affect the outcome of the suit under the
18 governing law." *Id.* at 248.
19

20 The Court is concerned that Plaintiffs' counsel has yet to
21 enter an appearance in this case and failed to file any
22 opposition or notice of non-opposition as is required by the
23 local rules. E.D.C.A. Local Rule 78-230(c). In an abundance of
24 caution, the Court instructs Plaintiffs' counsel to serve a copy
25 of this order on Plaintiff and return proof of service to the
26 Court. Plaintiff will be afforded an additional fifteen (15)
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1 days from electronic service of this order on Plaintiff's counsel
2 to inform the court whether or not Plaintiff intends to oppose
3 the motion. If Plaintiff does not intend to oppose the motion
4 Plaintiff's counsel shall file a notice of non-opposition with
5 the Court. See E.D.C.A. Local Rule 78-230(c).

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7 SO ORDERED
Dated: April 1, 2011

8 /s/ Oliver W. Wanger
9 United States District Judge
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