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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

**DONALD WARD and CARRIE LYNN
CARLILE-WARD,**

Plaintiffs,

v.
**WELLS FARGO BANK, N.A. and DOES
6-100,**

Defendants.

**CASE NO. 1:11-CV-0515 AWI SMS
ORDER RE: MOTION FOR
ATTORNEY’S FEES**

Plaintiffs Donald and Carrie Lynn Carlile-Ward purchased their home at 560 N. McClure Rd., CA 95357 in 2001. In April 2005, Plaintiffs obtained a mortgage on the property from Defendant Wells Fargo. Plaintiffs fell behind on their mortgage payments starting in February 2009. Plaintiffs requested that Defendant modify their mortgage through the Home Affordable Modification Program. Defendant refused and started foreclosure proceedings. Plaintiffs sued Defendant in state court, alleging breach of contract and breach of implied covenant of good faith and fair dealing. Defendant removed the case to federal court based on diversity jurisdiction. The case was originally assigned to Judge Oliver Wanger. Defendant made a motion to dismiss for failure to state a claim. The motion was granted and Plaintiffs’ claims were dismissed without leave to amend.

Defendant made a motion for attorney’s fees as the prevailing party in this litigation. While the motion was pending, it came to the court’s notice that Plaintiffs’ attorney, Ramon M.

1 Gonzalez, had been disciplined by the California State Bar and was not allowed to practice law.

2 Judge Wanger ordered,

3 The court has gained notice that Plaintiffs counsel, Ramon Mendez Gonzalez, has
4 recently been disciplined by the State Bar of California in a similarly situated case for,
5 inter alia, repeatedly failing to perform legal services including, but not limited to,
6 negotiating and obtaining a home mortgage loan modification. Mr. Gonzalez is currently
7 on probation and scheduled to begin a six month suspension of the practice of law for his
8 actions on Sept. 9, 2011. Because of the State Bar proceedings and because Defendants
9 motion for attorneys fees was not served on Plaintiffs personally, it is uncertain whether
and to what extent Plaintiffs have knowledge of the proceedings in this action.

10 **Defendant is directed to personally serve Plaintiffs Donald Ward and/or Carrie
Lynn Carlile-Ward with their motion for attorneys fees within 10 days.** The hearing
11 on the motion currently scheduled for 8/29/11 before Judge Wanger is VACATED. The
12 motion hearing will be reset upon receipt of a proof of service on the individual Plaintiffs.

13 Doc. 17, emphasis added.

14 Judge Wanger subsequently retired and the case was reassigned. In the process of
15 transferring the case, the motion hearing was reset as a matter of course. Doc. 21. The matter
16 was then taken under submission without oral argument. Doc. 22. In examining the actions in
17 this case, the court has discovered that Defendant did not comply with Judge Wanger's order.
18 Instead of personal service, Defendant attempted service by mail, which was returned unopened.
19 Doc. 19. Ramon Gonzalez remains suspended and prohibited from practicing law in California.
20 There is no firm guarantee that Plaintiffs have actual knowledge of this motion for attorney's
21 fees.

22 This motion for attorney's fees is denied without prejudice for failure to follow court
23 order. Defendant may file a renewed motion within fifteen (15) days, but must provide proof of
24 personal service on Plaintiffs Donald Ward and/or Carrie Lynn Carlile-Ward to ensure that they
25 have actual notice of the motion.

26 IT IS SO ORDERED.

27 Dated: March 28, 2012

28 
CHIEF UNITED STATES DISTRICT JUDGE