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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

STEVE AMADEI,

NO. CIV. S-09-1370 LKK/EFB

Plaintiff,

v.

O R D E R

ETS SERVICES, LLC; WACHOVIA
MORTGAGE, FSB, F.K.A. WORLD
SAVINGS BANK; WORLD SAVINGS
BANK, FSB and DOES 1-50,
inclusive,

Defendants.

_____ /

Plaintiff brings nine causes of action relating to his home loan and defendants' efforts to foreclose on the loan. Pending before the court are motions to dismiss and strike the complaint, presently set for hearing on September 28, 2009, and a motion by plaintiff's counsel seeking to withdraw, set for hearing on September 14, 2009. For the reasons set forth below, the court grants the motion to withdraw, and further continues the motions to dismiss and strike.

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I. BACKGROUND

Plaintiff's complaint was filed in state court and removed here. A motion to dismiss and motion to strike were filed on June 10, 2009, noticed for hearing on August 17. Plaintiff failed to file an opposition or statement of non-opposition by the August 3 deadline. The court contacted plaintiff's counsel, who indicated that he was seeking to withdraw. On August 7 (four days after the opposition would have been due), this court issued an order to show cause as to why sanctions should not issue as a result of this failure, directing plaintiff to respond by August 24. The OSC continued the hearings until September 28, and stated that plaintiff's opposition or statement of non-opposition must be filed by September 8. These dates were chosen to allow plaintiff's counsel time to prepare an opposition, or, in the alternative, for replacement counsel to prepare an opposition. Plaintiff has not directly responded to the OSC.

On August 6, after the OSC was prepared but before it was issued, plaintiff's counsel filed a motion to withdraw, noticed for hearing on September 14. This motion also requested an extension of time for the filing of "responsive pleadings," apparently in reference to the pending motions. Counsel declares that plaintiff has not paid fees, and that plaintiff has been incarcerated for a matter unrelated to the present case. Counsel further declares that plaintiff has been given repeated written and telephonic notice of counsel's intent to withdraw. Plaintiff himself has not filed any sort of declaration, and counsel makes no representation

1 regarding plaintiff's position regarding withdrawal.

2 **II. DISCUSSION**

3 At the outset, the court notes that plaintiff has not
4 responded to the OSC. The motion to withdraw, filed after the
5 deadline by which plaintiff's opposition or statement of non-
6 opposition was due, does not explain why plaintiff failed to file
7 a timely response. This is especially so in light of the fact that
8 the motions were filed on June 10, 2009 and noticed for hearing on
9 August 17, 2009, granting plaintiff roughly seven weeks notice of
10 the August 3 obligation. Accordingly, the court sanctions
11 plaintiff's counsel in the amount of \$150.

12 **III. CONCLUSION**

13 For the reasons stated above, the court ORDERS as follows:

- 14 1. Counsel for plaintiff is hereby sanctioned and ORDERED to pay
15 One Hundred Fifty Dollars (\$150) to the clerk of the court by
16 September 28, 2009, as permitted by Local Rule 11-110.
- 17 2. This sanction is to be paid personally by counsel, out of
18 personal funds, and is not and will not be billed, directly
19 or indirectly, to the client or in any way made the
20 responsibility of the client as attorneys' fees or costs.
21 Counsel shall file an affidavit accompanying the payment of
22 this sanction affirming the above.
- 23 3. Counsel's motion to withdraw, Doc. 13, is GRANTED.
- 24 4. The hearing on the motion to dismiss and motion to strike,
25 Doc. Nos. 9 and 10, is CONTINUED to October 13, 2009 at 10:00
26 a.m.


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5. Plaintiff must file and serve an opposition or statement of non-opposition to the pending motion to dismiss and motion to strike no later than September 28, 2009 at 5:00 PM;

6. Defendant's reply, if any, must be filed on or before October 5, 2009.

IT IS SO ORDERED.

DATED: September 3, 2009.


LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT