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

ARTURO VERDUZCO and DELILA)
VERDUZCO,)
)
Plaintiff,)
)
v.)
)
INDYMAC BANK HOME LOAN SERVICING;)
INDYMAC FEDERAL BANK, FSB; INDYMAC)
MORTGAGE SERVICES, a division of)
ONE WEST BANK FSB; BAC HOME LOAN)
SERVICING LP, a subsidiary of BANK)
OF AMERICA, N.A.; MORTGAGE)
ELECTRONIC REGISTRATION SYSTEMS,)
INC.; SIERRA PACIFIC MORTGAGE;)
NDEX WEST, LLC; U.S. BANK NATIONAL)
ASSOCIATION; WBJ, INC.; WILLMA E.)
SPARANO; DANIEL RUPP,)
)
Defendants.)
_____)

2:09-cv-02371-GEB-KJM
RULE 4 (M) NOTICE

Plaintiffs have not served several defendants named in their First Amended Complaint ("FAC") filed on November 10, 2009. In the Joint Status Report ("JSR") filed on December 31, 2009, Plaintiffs stated that Defendant Willma E. Sparano ("Sparano") had not yet been served. The Court issued a Rule 4(m) notice on January 14, 2010, requiring Plaintiffs to "provide proof of service and/or show good cause for the failure to serve this Defendant" by January 22, 2010. However, since Sparano was first named in the FAC, the Rule 4(m) prescribed 120-day period to serve Sparano expired March 10, 2010, and therefore the January 14, 2010 Rule 4(m) notice was premature. However, the 120-day period to serve defendants first named in the FAC

1 has elapsed, and it does not appear that Plaintiffs have served
2 Sparano; nor does the docket indicate that Plaintiffs have served
3 several other defendants named in the FAC.

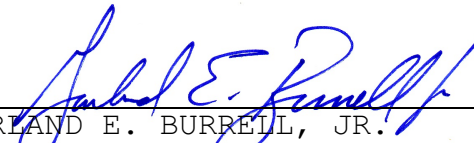
4 Plaintiffs are hereby **notified under Federal Rule of Civil**
5 **Procedure ("Rule") 4(m) that Defendants Willma E. Sparano; IndyMac**
6 **Federal Bank, FSB; BAC Home Loan Servicing, LP, a Subsidiary of Bank**
7 **of America, N.A.; and U.S. Bank National Association could be**
8 **dismissed as Defendants in this action unless Plaintiffs provide proof**
9 **of service and/or "show[] good cause for the failure" to serve these**
10 **defendants within Rule 4(m)'s 120 day prescribed period, in a filing**
11 **due no later than 4:00 p.m. on May 22, 2010.**

12 Further, Plaintiffs filed a "Summons Returned Executed" for
13 Defendant NDEX West, LLC on October 7, 2009. (Docket No. 15.)
14 However, this docket entry provides that CT Corporation, which is not
15 a party to this action, was served with that summons, and not NDEX
16 West LLC. See Fed. R. Civ. P. 4(a)(1) ("A summons must . . . be
17 directed to the defendant[.]"). Further, Plaintiffs have not provided
18 proof of service of the FAC on NDEX West, LLC. Therefore, Plaintiffs
19 are also **notified that Defendant NDEX West, LLC could be dismissed as**
20 **a defendant in this action unless Plaintiffs provide proof of service**
21 **and/or "show[] good cause for the failure" to serve this defendant**
22 **within Rule 4(m)'s 120 day prescribed period, in a filing due no later**
23 **than 4:00 p.m. on May 22, 2010.**

24 Lastly, Plaintiffs name both **IndyMac Bank Home Loan**
25 **Servicing and IndyMac Mortgage Services, a Division of OneWest Bank,**
26 **FSB** in their FAC. Plaintiffs served only Indymac Bank Home Loan
27 Servicing. However, Indymac Mortgage Services, a Division of OneWest
28 Bank, FSB has filed motions to dismiss both Plaintiffs' original

1 complaint and Plaintiffs' FAC, in which it states it was "erroneously
2 sued [] as IndyMac Bank Home Loan Servicing." Plaintiffs did not
3 correct their FAC to reflect this error; nor did Plaintiffs address
4 the error in their Opposition to Indymac Mortgage Services, a Division
5 of OneWest Bank, FSB's motion. Therefore, IndyMac Bank Home Loan
6 Servicing could be dismissed as an erroneously sued party unless
7 Plaintiffs explain in a filing on or before 4:00 p.m. on May 22, 2010,
8 why this named defendant should not be dismissed.

9 Dated: May 12, 2010

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13 GARLAND E. BURRELL, JR.
14 United States District Judge
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