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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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LORENZO Y. DE VEGA, VIRGINIA  
S. DE VEGA,

NO. 2:10-cv-01507-FCD/DAD

Plaintiffs,

v.

MEMORANDUM AND ORDER

SUNTRUST MORTGAGE, INC., et  
al.,

Defendant.

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This matter is before the court on the motion of defendant SunTrust Mortgage, Inc. ("SunTrust" or "defendant") to expunge plaintiffs Lorenzo Y. De Vega and Virginia S. De Vega's (collectively, "plaintiffs") lis pendens. Plaintiffs did not file an opposition to the motion. For the reasons set forth below,<sup>1</sup> defendant's motion to expunge lis pendens is GRANTED.

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<sup>1</sup> Because oral argument will not be of material assistance, the court orders this matter submitted on the briefs. E.D. Cal. L.R. 230(g).

1 **BACKGROUND**

2 Plaintiffs brought this action in the Superior Court of  
3 California for the County of San Joaquin against defendants for  
4 conduct arising out of a mortgage loan. Thereafter, plaintiffs  
5 also filed a Notice of Pendency of Action with the state court  
6 with respect to the property at issue in the complaint, which is  
7 located at 4535 Parkvale Court, Stockton, California. On June  
8 16, 2010, defendants removed the case to this court on the basis  
9 of federal question jurisdiction.

10 Shortly after removing the case to federal court, defendants  
11 filed a motion to dismiss plaintiffs' complaint. On July 26,  
12 2010, the court issued an order to show cause regarding  
13 sanctions; specifically, the court ordered plaintiffs' counsel to  
14 show cause why he should not be sanctioned \$150 for failure to  
15 file an opposition or notice of non-opposition to defendants'  
16 motion. The court re-set the deadline for plaintiffs to file a  
17 response to August 6, 2010.

18 On August 9, 2010, after receiving no response from  
19 plaintiffs or plaintiffs' counsel, the court issued an order  
20 imposing sanctions of \$150 on plaintiffs' counsel. The court  
21 also ordered plaintiffs' counsel to show cause (1) why he should  
22 not be sanctioned \$300 for failure to file an opposition or  
23 notice of non-opposition to defendants' motion and for failure to  
24 respond to court orders; and (2) why the case should not be  
25 dismissed for failure to prosecute. The court re-set the hearing  
26 on defendants' motion to dismiss to September 24, 2010, and  
27 ordered plaintiffs' counsel to file a response on or before  
28 September 10, 2010.

1 On September 13, 2010, after plaintiffs' counsel again  
2 failed to respond to the court's orders, the court issued an  
3 order imposing sanctions<sup>2</sup> and dismissing the case. Judgment was  
4 entered in favor of defendants on the same day.

5 **ANALYSIS**

6 Defendant SunTrust moves to expunge plaintiffs' lis pendens  
7 on the property at 4535 Parkvale Court, Stockton, California.  
8 Specifically, defendant asserts that because plaintiffs failed to  
9 establish a real property claim, the property should no longer be  
10 encumbered by the lis pendens.

11 Federal courts look to state law in matters pertaining to  
12 lis pendens. See 28 U.S.C. § 1964. Under California Code of  
13 Civil Procedure § 405.20, "[a] party to an action who asserts a  
14 real property claim may record a notice of pendency of action, [a  
15 lis pendens], in which that real property claim is alleged." The  
16 purpose of a lis pendens is to give "constructive notice that an  
17 action has been filed affecting title or right to possession of  
18 the real property described in the notice." BGJ Assocs., LLC v.  
19 Superior Court, 75 Cal. App. 4th 952, 966 (2d Dist. 1999). "Its  
20 effect is that anyone acquiring an interest in the property after  
21 the action was filed will be bound by the judgment." Id. "Once  
22 a lis pendens is filed, it clouds the title and effectively  
23 prevents the property's transfer until the litigation is resolved  
24 or the lis pendens is expunged." Id. at 967.

25 "At any time after notice of pendency of action has been  
26 recorded, any party . . . may apply to the court in which the

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27 <sup>2</sup> Plaintiffs' counsel paid his sanctions in the amount of  
28 \$450 on September 28, 2010.

1 action is pending to expunge the notice." Cal. Code Civ. Proc. §  
2 405.30. Further, pursuant to California Code of Civil Procedure  
3 §§ 405.31 and 405.32, a court shall order that the notice be  
4 expunged if (1) "the court finds that the pleading on which the  
5 notice is based does not contain a real property claim"; or (2)  
6 "the court finds that the claimant has not established by a  
7 preponderance of the evidence the probable validity of the real  
8 property claim."

9 In this case, as a result of plaintiffs' complete failure to  
10 prosecute their claims and repeated failure to comply with court  
11 orders, the court dismissed plaintiffs' claims. As such,  
12 plaintiffs are left without "a real property claim" and cannot  
13 establish the "probable validity" of such a claim in this case.  
14 Accordingly, defendant SunTrust's motion to expunge the lis  
15 pendens is GRANTED.

16 **CONCLUSION**

17 For the foregoing reasons, defendant SunTrust's motion to  
18 expunge lis pendens is GRANTED, and plaintiffs' lis pendens is  
19 hereby expunged from the public record. Specifically, the lis  
20 pendens as to the property located at 4535 Parkvale Court,  
21 Stockton, California, and recorded in the San Joaquin County  
22 Records Office as Document Number 2010-050134, is hereby  
23 expunged from the public record.

24 IT IS SO ORDERED.

25 DATED: April 7, 2011



26  
27 FRANK C. DAMRELL, JR.  
28 UNITED STATES DISTRICT JUDGE