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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GLORIA LEONARES,

NO. CIV. S-10-2012 LKK/KJM

Plaintiff,

v.

O R D E R

WELLS FARGO BANK, N.A.;
WESTERN RECONVEYANCE
CORPORATION; and
DOES 1 to 100, inclusive,

Defendants.

_____ /

This is an action to enjoin foreclosure on plaintiff's home. Plaintiff alleges that defendants violated RESPA while brokering a refinance of her home in Vallejo, CA, that defendants negligently misrepresented the character of the transaction and breached their fiduciary duty to plaintiff. The case was originally filed in Solano County Superior court. Defendant Wells Fargo removed the case to federal court and has filed a motion to dismiss. The motion was originally set for hearing on October 12, 2010, but plaintiff did not timely file an opposition or a notice of non-opposition.

1 This court ordered plaintiff's counsel, to show cause why sanctions
2 should not issue and why the case should not be dismissed based on
3 plaintiff's failure to file an opposition or statement of non-
4 opposition to the motion to dismiss. The order also continued the
5 hearing to October 25, 2010, and directed the plaintiff to file and
6 serve an opposition or statement of non opposition on or before
7 October 11, 2010. Order, October 4, 2010, ECF No. 11.

8 Plaintiff's counsel timely responded to the order to show
9 cause, but has still not filed an opposition or statement of non-
10 opposition to the motion to dismiss. In the response to the order
11 to show cause, plaintiff's counsel indicated that he planned to
12 file an amended complaint, but that a family emergency prevented
13 him from doing so by the court's deadlines. Counsel did not explain
14 how his family emergency prevented him from filing an opposition
15 or statement of non-opposition, and has therefore not shown cause
16 for why sanctions should not issue. To this date, plaintiff has
17 not filed for leave to amend the complaint, nor has plaintiff filed
18 an opposition to defendant's motion to dismiss. However, the
19 Federal Rules of Civil Procedure instruct courts to "freely give
20 leave [to amend pleadings] when justice so requires." Fed. R. Civ.
21 P. 15 (a)(2). For this reason, the court construes plaintiff's
22 response to the order to show cause as a motion for leave to file
23 an amended complaint. The court grants the motion for leave.
24 Plaintiff shall file his amended complaint within seven (7) days
25 of the issuance of this order.

26 ////

1 The court therefore ORDERS as follows:

2 [1] Counsel for plaintiff is SANCTIONED in the amount of
3 one hundred and fifty (\$150.00) dollars. This sum shall
4 be paid to the Clerk of the Court no later than thirty
5 (30) days from the date of this order. Counsel shall
6 file an affidavit accompanying the payment of this
7 sanction which states that it is paid personally by
8 counsel, out of personal funds, and is not and will not
9 be billed, directly or indirectly, to the client or in
10 any way made the responsibility of the client as
11 attorneys' fees or costs.

12 [2] Wells Fargo's motion to dismiss, ECF No. 6, is
13 GRANTED.

14 [3] The court construes ECF No. 12, plaintiff's response
15 to the order to show cause, as a motion for leave to
16 amend and the court GRANTS plaintiff leave to amend the
17 complaint.

18 [4] Plaintiff is ORDERED to file an amended complaint
19 within seven (7) days of issuance of this order. Failure
20 to timely file an amended complaint will result in all
21 claims against Wells Fargo being dismissed.

22 IT IS SO ORDERED.

23 DATED: October 15, 2010.

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LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT