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

TARIQ M. KATINA,

Plaintiff,

No. 2:10-cv-02016 JAM KJN PS

v.

MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.
“MERS”; CITI MORTGAGE;
NEIGHBOR’S FINANCIAL
CORPORATION; CR TITLE
SERVICES INC.; JOHN OR JANE
DOES 1-1000,

Defendants.

ORDER

On October 5, 2010, this matter was referred to the undersigned by United States District Judge John A. Mendez. (Dkt. No. 13.) This order addresses the issues related to whether plaintiff, who is proceeding without counsel, was served with the Notice of Removal, motion to dismiss, motion to strike, and other documents filed by defendants¹ CitiMortgage, Inc. (“CitiMortgage”), CR Title Services, Inc. (“CR Title”), and Mortgage Electronic Registration

¹ The court’s docket reveals that defendant Neighbor’s Financial Corporation has not appeared in this action since it was removed to federal court. The remaining defendants’ Notice of Removal claims that Neighbor’s Financial Corporation had not been served with plaintiff’s complaint as of the time of the removal to this court.

1 Systems, Inc. (“MERS”). (See Dkt. Nos. 1, 5, 6.)

2 The documents on file with the court indicate that plaintiff filed a verified
3 “Complaint to Quiet Title” in the Superior Court of California for the County of Sacramento
4 (“Superior Court”) on June 30, 2010. (Notice of Removal, Exs. A & B, Dkt. No. 1.) Although
5 plaintiff did not have counsel at the time he filed his complaint, it appears that on July 2, 2010,
6 plaintiff filed a Substitution of Attorney form in the Superior Court indicating that he had
7 retained counsel, attorney Timothy L. McCandless. (Dkt. No. 1 at 50-51.)

8 On July 29, 2010, defendants CitiMortgage, CR Title, and MERS (the “Removing
9 Defendants”), removed this action from the Superior Court to this court. (See Notice of
10 Removal, Dkt. No. 1.) In the Notice of Removal, the Removing Defendants indicated, in part,
11 that they would “promptly give written notice of the removal to all adverse parties.” (Notice of
12 Removal ¶ 9.) Although the Removing Defendants subsequently filed, on August 2, 2010, a
13 document entitled “Notice to Adverse Parties of Removal of Superior Court Action to Federal
14 Court” (“Notice to Adverse Parties of Removal”), neither that notice nor the previously filed
15 Notice of Removal appends a proof of service or certificate of service indicating which parties, if
16 any, were served with those documents.

17 Also on August 2, 2010, the Removing Defendants filed a notice of motion and
18 motion to strike several paragraphs of plaintiff’s complaint pursuant to Federal Rule of Civil
19 Procedure 12(f) (Dkt. No. 5), and a notice of motion and motion to dismiss plaintiff’s complaint
20 pursuant to Federal Rules of Civil Procedure 8(a) and 12(b)(6) (Dkt. No. 6). As with the Notice
21 of Removal and Notice to Adverse Parties of Removal, however, the motion to dismiss and
22 motion to strike, and related documents, do not include an attached proof of service or certificate
23 of service.

24 The court’s docket reveals that plaintiff did not file written oppositions, or
25 statements of non-opposition, to the motion to dismiss and motion to strike. On September 28,
26 2010, the Removing Defendants filed reply briefs related to the motion to dismiss and motion to

1 strike, both of which point to plaintiff's failure to oppose the pending motions. (Dkt. Nos. 7, 8.)
2 Again, however, the Removing Defendants did not append proofs of service or certificates of
3 service to these briefs. On September 30, 2010, Judge Mendez submitted the motion to dismiss
4 and motion to strike without oral argument. (Dkt. No. 9.)

5 On October 1, 2010, the Removing Defendants filed a notice of motion and
6 motion to expunge plaintiff's notice of pendency of action (lis pendens) ("motion to expunge").
7 (Dkt. No. 10.) Unlike every filing by the Removing Defendants prior to October 1, 2010, the
8 Removing Defendants filed a certificate of service indicating that they had served plaintiff, who
9 Removing Defendants now acknowledge is proceeding without counsel, with the motion to
10 expunge by U.S. mail.

11 A subsequently entered minute order indicates that on October 1, 2010, this "court
12 received a copy of a substitution of attorney that was filed in the state court matter prior to the
13 removal to The United States District Court, Eastern District of California." (Dkt. No. 12.) As a
14 result of plaintiff's newly identified pro se status, this case, including the submitted motion to
15 dismiss and motion to strike, was referred to the undersigned consistent with Eastern District
16 Local Rule 302(c)(21). (Dkt. Nos. 13, 14.)

17 Briefly stated, the undersigned has significant questions regarding whether the
18 Removing Defendants ever served plaintiff with any of the documents filed in this court prior to
19 October 1, 2010, including the Notice of Removal, Notice to Adverse Parties, motion to dismiss,
20 and motion to strike. It may be that the Removing Defendants were previously laboring under
21 the false impression that plaintiff had been electronically served with all of the pre-October 1st
22 filings. However, such a conclusion is belied by: (1) this court's local rules, which state that
23 "[a]ny person appearing pro se may not utilize electronic filing except with the permission of the
24 assigned Judge or Magistrate Judge" and that pro se parties must be conventionally served absent
25 permission to participate in electronic filing, see E. Dist. Local Rules 133(b)(2), 135(b); and
26 (2) the fact that plaintiff apparently filed a notice of substitution which indicated his pro se status

1 *prior* to the removal of this action to federal court. The undersigned is also troubled by the fact
2 that it appears that the Removing Defendants are aware that they must serve pro se parties
3 conventionally, given that they conventionally served plaintiff with the motion to expunge.
4 Based on the record before the court, the undersigned has no assurance that plaintiff has
5 knowledge, or at least legally sufficient notice, that his case was removed to federal court and
6 that motions to dismiss and strike are pending.²

7 Accordingly, before the undersigned will consider the Removing Defendants’
8 pending motions, the Removing Defendants must demonstrate to the court that they served
9 plaintiff with all of the documents that they filed in this case prior to October 1, 2010, in a
10 manner consistent with this court’s local rules and the Federal Rules of Civil Procedure. Proof of
11 such service may take the form of a declaration made under penalty of perjury, accompanied by
12 the proofs of service.

13 Based on the foregoing reasons, IT IS HEREBY ORDERED that:

14 1. On or before November 5, 2010, defendants CitiMortgage, Inc., CR Title
15 Services, Inc., and Mortgage Electronic Registration Systems, Inc. shall file with the court, *and*
16 *serve on plaintiff*, proof that they served all documents filed in this matter prior to October 1,
17 2010, on plaintiff in a manner consistent with this court’s local rules and the Federal Rules of
18 Civil Procedure.

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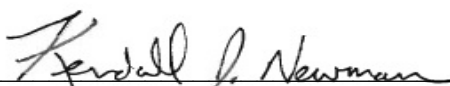
25 ² The service issues recounted above may also raise issues regarding the timing and propriety
26 of the removal of this case to federal court. At this time, the undersigned expresses no view
regarding whether removal was proper.

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2. Plaintiff may, but is not required to, file a response to the defendants' submission on or before November 19, 2010, addressing whether he disputes that he was properly served and, if served, why he has failed to file a timely opposition to defendants' motions to strike and to dismiss. Plaintiff's response, if any, shall not exceed five pages in length using a 12-point size type font, excluding any relevant exhibits.

IT IS SO ORDERED.

DATED: October 7, 2010



KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE