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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CRISOSTOMO P. VILLANUEVA,
Plaintiff,
v.
FIRST FEDERAL BANK OF
CALIFORNIA, et al.,
Defendants.

No. 2:14-cv-2012-TLN-KJN PS

ORDER AND
ORDER TO SHOW CAUSE

Plaintiff Crisostomo Villanueva, proceeding without counsel, commenced this action alleging wrongful foreclosure and other related claims on August 29, 2014, and paid the filing fee. (ECF No. 1.) That same day, the court issued an “Order Setting Status Conference.” (ECF No. 6.) The order directed plaintiff to “complete service of process on defendants named in the complaint within 120 days from the date of this order. Plaintiff is cautioned that this action may be dismissed if service of process is not accomplished within 120 days from the date that the complaint is filed. See Fed. R. Civ. P. 4(m).” (Id. at 1.)

That same order set a status (pre-trial scheduling) conference for January 15, 2015, at 10:00 a.m., and stated that “[a]ll parties shall appear by counsel or in person if acting without counsel.” (ECF No. 6 at 2.) The order also directed the parties to file a status report addressing specific topics no later than seven (7) days prior to the status conference. (Id. at 2-3.) The order

1 specifically cautioned that “[f]ailing to obey federal or local rules, or [an] order of this court, may
2 result in dismissal of this action. This court will construe pro se pleadings liberally, but pro se
3 litigants must comply with the procedural rules.” (Id. at 3.)

4 No status report was filed prior to the January 15, 2015 status conference, and plaintiff
5 failed to appear at the status conference. Additionally, the court’s records indicate that no
6 defendant has yet appeared in this case, and there has been no docket activity since plaintiff filed
7 an election to decline the jurisdiction of the magistrate judge for all purposes on September 15,
8 2014. (ECF No. 7.) Such inactivity strongly suggests that plaintiff has not yet served defendants
9 with process, even though the 120-day period for service of process has now expired.

10 Based on plaintiff’s numerous failures, the court has considered whether the action should
11 be dismissed at this juncture. Nevertheless, in light of plaintiff’s *pro se* status and the court’s
12 general preference to resolve actions on their merits, the court first attempts lesser sanctions.

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. Within fourteen (14) days of this order, plaintiff shall pay the Clerk of Court \$250.00
15 in monetary sanctions based on plaintiff’s failure to appear at the status conference
16 and failure to comply with court orders.
- 17 2. Within fourteen (14) days of this order, plaintiff shall also show cause in writing why
18 this case should not be dismissed pursuant to Federal Rule of Civil Procedure 41(b)
19 based on plaintiff’s failure to prosecute the case and failure to comply with court
20 orders.
- 21 3. Alternatively, if plaintiff no longer wishes to pursue the action at this time, he may
22 instead file a notice of voluntary dismissal of the action without prejudice pursuant to
23 Federal Rule of Civil Procedure 41(a)(1)(A)(i) within fourteen (14) days of this order.
- 24 4. Failure to pay the monetary sanctions imposed and file a written response to the order
25 to show cause by the required deadline, OR file a notice of voluntary dismissal of the

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action by the required deadline, will result in a recommendation that the action be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

Dated: January 16, 2015


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE