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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GEORGE ALVARA,)	
)	
Plaintiff,)	No. C-09-1512 SC
)	
v.)	
)	<u>ORDER EXPUNGING LIS</u>
AURORA LOAN SERVICES, INC. (a)	<u>PENDENS</u>
Delaware Corporation); HOMEFIELD)	
FINANCIAL, INC. (a California)	
Corporation); QUALITY LOAN SERVICES))	
CORPORATION (a California)	
Corporation), and DOES 1 through)	
50, inclusive,)	
)	
Defendants.)	
)	
_____)	

Following this Court's dismissal of Plaintiff's Complaint, Docket No. 11 ("Dismissal Order"), this Court refused to grant Plaintiff an extension of time to file his untimely Amended Complaint, and dismissed the suit with prejudice, Docket No. 16 ("Extension Order"). Defendant Aurora Loan Services has now filed a Motion to Expunge Lis Pendens and Request for Award of Attorney Fees and Costs ("Motion"). Docket No. 17.

Under California Code of Civil Procedure section 405.31, "the court shall order that the notice be expunged if the court finds that the claimant has not established by a preponderance of the evidence the probable validity of the real property claim." The Court has previously found that Plaintiff failed to successfully plead a real property claim. Plaintiff failed to timely correct his deficient pleading, and his claims were dismissed with

1 prejudice. The Court therefore EXPUNGES the Notice of Action
2 Pending (Lis Pendens) dated January 23, 2009, signed by attorney
3 James Curtis, on the subject property 193 1st Avenue, Daly City,
4 California 94014, Assessor's Parcel No. 006-252-070.

5 Aurora also seeks attorney fees under section 405.38:

6 The court shall direct that the party prevailing on
7 any motion under this chapter be awarded the
8 reasonable attorney's fees and costs of making or
9 opposing the motion unless the court finds that the
other party acted with substantial justification or
that other circumstances make the imposition of
attorney's fees and costs unjust.

10 Cal. Civ. Proc. Code § 405.38. The Court finds that this suit
11 does not warrant the imposition of fees and costs. Plaintiff's
12 Complaint was initially dismissed without prejudice, and it was
13 Plaintiff's attorney who failed to properly prosecute this and
14 other actions that resulted in this suit's premature dismissal.
15 See Extension Order at 3-4. In addition, Plaintiff's house was
16 foreclosed upon because of his inability to pay his mortgage.
17 Under these circumstances, the imposition of attorney fees against
18 Plaintiff himself would not be just. Consequently, Plaintiff's
19 request for attorney fees and costs is DENIED.

20 Aurora's Motion to expunge lis pendens on the subject
21 property is GRANTED and its related request for attorney fees and
22 costs is DENIED.

23 IT IS SO ORDERED.

24
25 January 5, 2010

26 
27 _____
UNITED STATES DISTRICT JUDGE