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United States District Court  
For the Northern District of California

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

TONY A. LUCERO,  
Plaintiff,

No. C 09-02879 CRB

**ORDER RE PLAINTIFF'S  
AUGUST 21, 2009 FILING**

v.

AMERICAN HOME MORTGAGE,  
Defendant.

The Court is in receipt of a filing by Plaintiff Tony Lucero in response to the Court's August 11, 2009 Order to Show Cause why the action should not be terminated for failure to prosecute. The Court's order was prompted by Plaintiff's having failed to file an opposition to Defendant's motion to dismiss by the deadline of July 31, 2009. Plaintiff's filing explained that counsel had not anticipated Defendant's removal of the action to federal court, that counsel was not admitted to practice in federal court, and that during its "seeming lack of prosecution," counsel was busily seeking to rectify that problem. The action will not be terminated for failure to prosecute; however, counsel is advised that returning the Court's telephone calls on this matter would have been both proper and appreciated.

Plaintiff's filing states that Plaintiff had not intended to state a federal cause of action in Paragraph 19 of the complaint, and that Plaintiff "expressly waives those claims," thus eliminating any federal question in the case. Plaintiff represents that he attempted to reach a stipulation with Defendant regarding a remand to state court, and that Defendant's counsel

1 responded that he “would evaluate and potentially recommend this stipulation should he see  
2 a waiver in writing and under penalty of perjury.”

3 Therefore, if no stipulated remand is earlier filed, Plaintiff shall file a motion to  
4 remand within fourteen (14) days of this Order. Plaintiff’s motion shall address (1) whether  
5 there is federal question jurisdiction, and (2) whether diversity exists between the parties, as  
6 argued in Defendant’s Notice of Removal. Defendant’s Opposition, if any, shall be filed  
7 seven (7) days following the motion to remand, and Plaintiff’s Reply, if any, shall be filed  
8 seven days (7) following the Opposition. The motion to remand shall be heard on October 2,  
9 2009 at 10:00 a.m. in Courtroom 8. Upon the resolution of the motion to remand, the Court  
10 may re-calendar Defendant’s motions to suppress and to dismiss.

11 **IT IS SO ORDERED.**

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13 Dated: August 24, 2009



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CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE