

United States District Court
For the Northern District of California

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

In re
JOSE MARIO ZUNIGA,
Debtor,

ONEWEST BANK, FSB, and its successors
and/or assignees,
Movant,
v.
JOSE MARIO ZUNIGA, Debtor, and
MARTHA G. BRONITSKY, Trustee,
Respondents
_____ /

No. C-10-0449 MMC

**ORDER DIRECTING APPELLANT TO
SHOW CAUSE WHY APPEAL SHOULD
NOT BE DISMISSED FOR FAILURE TO
PROSECUTE**

On December 29, 2009, appellant Jose Mario Zuniga ("Zuniga") filed a notice of appeal from the bankruptcy court's Order Terminating Automatic Stay, filed December 22, 2009.

The appeal was reassigned to the undersigned on February 1, 2010, in light of appellee OneWest Bank, FSB's ("OneWest Bank") Statement of Election, filed January 22, 2010, by which OneWest Bank has elected to have the appeal heard in the Northern District of California, rather than before the Bankruptcy Appellate Panel of the Ninth Circuit ("BAP").

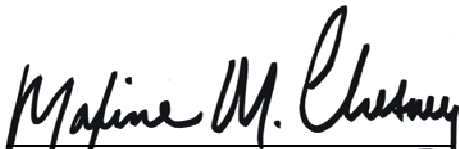
1 Prior to OneWest Bank's having filed the above-referenced Statement of Election,
2 the BAP, on January 14, 2010, ordered Zuniga to show cause why his appeal should not
3 be dismissed for failure to prosecute. Specifically, in its Notice of Deficient Appeal and
4 Impending Dismissal ("Notice"), filed January 14, 2010, the BAP observed that it appeared
5 Zuniga had failed to prosecute the instant appeal, in light of Zuniga's failure to file a
6 Designation of Record, failure to file a Statement of Issues, and failure to file a Transcript
7 Order Notice and to make satisfactory arrangements for payment of any transcripts
8 ordered.

9 OneWest Bank's election to have the appeal heard in the district court does not relief
10 Zuniga of his obligation to prosecute the instant appeal.

11 Accordingly, for the reasons stated in the BAP's Notice, filed January 14, 2010,
12 Zuniga is hereby ORDERED TO SHOW CAUSE, in writing and no later than February 12,
13 2010, why the instant appeal should not be dismissed for failure to prosecute. As set forth
14 in the BAP's Notice, Zuniga shall include in any response (1) the date on which he filed in
15 the Bankruptcy Court the Designation of Record, the Statement of Issues, and/or a
16 Transcript Order Notice, if he has filed any such document(s), and (2) an "adequate legal
17 explanation as to why the appeal should not be dismissed," which explanation shall, at a
18 minimum, address "why the [Court] should or should not impose alternative sanctions to
19 dismissal and the relative culpability between [Zuniga] and his [] attorney." (See Notice at
20 2.)

21 **IT IS SO ORDERED.**

22
23 Dated: February 4, 2010

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25 MAXINE M. CHESNEY
26 United States District Judge
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