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E-Filed 10/12/2010

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

KAROL DAVENPORT,

No. C 10-0679 RS

Plaintiff,

ORDER TO SHOW CAUSE

v.

LITTON LOAN SERVICING, LP, et al.,

Defendants.

_____ /
This Court dismissed plaintiff Karol Davenport’s complaint in its entirety on July 16, 2010. In that Order, the Court granted Davenport leave to amend several of her claims for relief but set a deadline for filing a First Amended Complaint (“FAC”) on September 1, 2010. The Court also scheduled a Further Case Management Conference for October 14, 2010. On August 8, 2010, plaintiff’s counsel moved to withdraw from the case. The Court granted this request and extended plaintiff’s time to file the FAC by thirty days, so that she would have time to retain counsel. Defendant filed a Case Management Statement on October 8, 2010. In that Statement, defendant pointed out that Davenport has still not filed her FAC, even though the (extended) deadline has now passed.

1 This failure does suggest a lack of diligence in prosecuting this case. Under Federal Rule of
2 Civil Procedure 41(b), the court may dismiss an action for failure to prosecute. In determining
3 whether a plaintiff's failure to prosecute warrants dismissal of the case, the court must weigh the
4 following factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need
5 to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
6 disposition of cases on their merits; and (5) the availability of less drastic sanctions. *Henderson v.*
7 *Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986).

8 Generally speaking, however, the district court must first warn the plaintiff that the case is in
9 danger of being dismissed for failure to prosecute and give the plaintiff an opportunity to respond.
10 *See, e.g., Palma v. Dent*, No. C 06-6151 PJH, 2007 WL 2023517, at *3 (N.D. Cal. July 12, 2007).
11 The Order dismissing Davenport's Complaint did not address the prospect that failure to amend
12 within the designated time period would result in dismissal. Accordingly, and in recognition of her
13 pro se status, plaintiff's action will not be dismissed with prejudice at this juncture. Instead, the
14 parties are directed to appear for a show cause hearing on **December 2, 2010, at 1:30 p.m.** in
15 Courtroom 3, 17th Floor, United States Courthouse, 450 Golden Gate Avenue, San Francisco,
16 California. At that hearing, plaintiff must explain why the case should not be dismissed with
17 prejudice for failure to prosecute. Plaintiff's time to file any FAC shall be extended until the date of
18 the hearing. The Case Management Conference scheduled for October 14, 2010 at 10:00 a.m. and
19 all other scheduled pretrial hearing dates are **vacated**.

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23 IT IS SO ORDERED.

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25 Dated: 10/12/2010



26 RICHARD SEEBORG
27 UNITED STATES DISTRICT JUDGE

28 No. C 10-0679 RS
ORDER TO SHOW CAUSE

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THIS IS TO CERTIFY THAT A HARD COPY OF THIS ORDER WAS MAILED TO:

Karol Davenport
P.O. Box 21747
El Sobrante, CA 94820

DATED: 10/12/2010

/s/ Chambers Staff
Chambers of Judge Richard Seeborg

* Counsel are responsible for distributing copies of this document to any co-counsel who have not registered with the Court's electronic filing system.