

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

RICHARD A. FRUSTERE,
Plaintiff,
v.
WELLS FARGO BANK, N.A., et al.,
Defendants.

No. 11-6395 MMC

**ORDER DEFERRING RULING ON
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT; VACATING
HEARING; DIRECTIONS TO CLERK**

Before the Court is defendant Wells Fargo Bank, N.A.'s ("defendant") Motion for Summary Judgment, filed February 4, 2013, by which motion defendant seeks judgment in its favor based on plaintiff's failure to respond to defendant's requests for admission. See Fed. R. Civ. P. 36(a)(3) (providing "[a] matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection"). No opposition has been filed. On February 15, 2013, however, plaintiff sent an e-mail to the Court and to defendant's counsel stating that, as a result of Hurricane Sandy, he was required to vacate his address of record and has not been receiving his mail since October 26, 2012. He lists his new address as 5 Nevis Court, Westerly, RI 02891.

Although, as defendant points out, plaintiff's Motion for Permission for Electronic

1 Case Filing was filed on November 13, 2012, during the period he states he was "isolated
2 from all mail/communication," it appears the motion was sent to the Clerk of Court by
3 facsimile transmission on September 27, 2012.¹ Under such circumstances, the Court will
4 defer ruling on defendant's motion and will afford plaintiff the opportunity to file an
5 opposition, accompanied by a declaration under penalty of perjury setting forth the reasons
6 for his failure to respond to defendant's discovery requests.

7 The Court further notes that, by order filed and mailed to plaintiff on November 16,
8 2012, the Court granted plaintiff's motion to file and receive documents electronically. Said
9 order will be mailed to plaintiff at his new address, and provides plaintiff with the means
10 necessary to readily access all documents currently filed in the case and any documents
11 filed thereafter.

12 Accordingly:

13 1. The Court hereby VACATES the hearing set for March 15, 2013, DEFERS ruling
14 on defendant's motion, and SETS a revised briefing schedule as follows:

15 (a) Plaintiff's opposition shall be filed on or before April 5, 2013.

16 (b) Defendant's reply shall be filed on or before April 19, 2013.

17 (c) Unless otherwise ordered, the matter will stand submitted as of April 19,
18 2013.

19 2. The Clerk of Court is hereby DIRECTED to substitute on the docket the following
20 address for plaintiff's current address of record and to mail to said address the Court's
21 Order Granting Plaintiff's Motion for Permission for Electronic Case Filing (Doc. No. 62):

22 Richard A. Frustere
23 5 Nevis Court
Westerly, RI 02891


24 3. Plaintiff is hereby advised that all further requests, responses, and other
25 communications with the Court are to be made only by documents that are filed in

26
27 ¹ Because facsimile transmission is not an approved form of filing and because
28 plaintiff's request was sent to a general fax number, it apparently was not located and
docketed for a considerable period of time after it was sent.

1 accordance with the court's approved procedures.²

2 **IT IS SO ORDERED.**

3 Dated: March 12, 2013

4 
MAXINE M. CHESNEY
United States District Judge

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27 _____
28 ² Plaintiff is not, for example, to submit by email any document other than a proposed order.