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

FRANKLIN S. CAMILLO, et al.,

Plaintiffs,

v.

WAUSAU MORTGAGE CORPORATION, et
al.,

Defendants.

No. C 12-03132 JSW

ORDER OF DISMISSAL

On July 11, 2012, Defendants Mortgage Electronic Registration Systems, Inc., U.S. Bank, N.A., Capital One, N.A., CCB LIBOR Series 2005-2 Trust, Chevy Chase Funding LLC Mortgage Back Certificates, Series 2005-2, Jeffrey R. Huston, and Joseph P. Eger filed a motion to dismiss, which is noticed for a hearing before this Court on September 14, 2012. Defendants served that motion on Plaintiffs, who are proceeding *pro se*, by mail on July 11, 2012. Pursuant to Northern District Civil Local Rules (“Local Rules”) 7-3(a) and 5-5(a), Plaintiffs’ opposition brief was due on July 30, 2012. On July 16, 2012, Defendant T.D. Service Company filed a motion to dismiss, which also is noticed for a hearing on September 14, 2012, and it served a copy of the motion on Plaintiffs by mail on that same date. Pursuant to Local Rules 7-3(a) and 5-5(a), Plaintiffs’ opposition brief to this motion was due on August 2, 2012.

Plaintiffs did not file opposition briefs to either motion, and on August 6, 2012, the Court issued an Order to Show Cause directing Plaintiffs to show cause why the case should not be dismissed for failure to prosecute.

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On August 17, 2012, Plaintiffs filed a notice of their intent to dismiss this case. Pursuant to Rule 41, a plaintiff may dismiss an action without a court order, “by filing (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or (ii) by a stipulation of dismissal signed by all parties who have appeared.” Fed. R. Civ. P. 41(a)(1). Defendants have not filed an answer or a motion for summary judgment.

Accordingly, the Court HEREBY DISMISSES this case without prejudice.¹

IT IS SO ORDERED.

Dated: August 22, 2012



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

¹ Pursuant to Rule 41(b), “if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.” Although Plaintiffs had filed a similar action, it appears that case centered on another parcel of real property than the real property at issue in this case. Compare *Camillo v. US Bank*, No. 11-CV-5228, Complaint ¶ 6 with *Camillo v. Wausau Mortgage, et al.*, No. 12-CV-3132, Complaint, ¶ 1.

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 FRANKLIN S. CAMILLO, ET AL. et al,
6 Plaintiff,

Case Number: CV12-03132 JSW
CERTIFICATE OF SERVICE

7 v.

8 WAUSAU MORTGAGE
9 CORPORATION, ET AL. et al,
10 Defendant.

11
12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
District Court, Northern District of California.

13 That on August 22, 2012, I SERVED a true and correct copy(ies) of the attached, by
14 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter
15 listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an
inter-office delivery receptacle located in the Clerk's office.

16
17 Celina Salazar Camillo
18 Franklin A Camillo
19 510 Vista Spring Court
Milpitas, CA 95035

20
21 Dated: August 22, 2012



Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk