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

United States District Court
Northern District of California

DONALD DIMITRUK, et al.,

Plaintiffs,

v.

MORTGAGEIT, INC., et al.,

Defendants.

Case No.: C-12-04117 JSC
ORDER TO SHOW CAUSE

On August 6, 2012, Plaintiffs, who are represented by counsel, filed this home mortgage lawsuit against Defendants Mortgageit, Inc., Indy Mac Federal Bank, FSB, Indymac Mortgage Services, and Mortgage Electronic Registration System, Inc. (Dkt. No. 1.) An initial Case Management Conference (“CMC”) was scheduled for November 29, 2012. The CMC, however, was moved to December 20, 2012 after Plaintiffs requested a continuance, citing the need for additional time “for out of court mediation proceedings between named plaintiffs and defendant.” (See Dkt. Nos. 9-11.) On December 19, 2012, Plaintiffs again requested a continuance of the CMC, repeating the assertion that additional time was needed “for out of court mediation proceedings between named plaintiffs and defendant.” (Dkt. No. 14.) The Court continued the CMC to January

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24, 2013. (Dkt. No. 15.) At the January 24, 2013 CMC, one of the Plaintiffs was present, but Plaintiffs' counsel failed to appear.

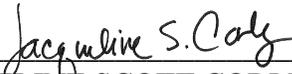
Additionally, Federal Rule of Civil Procedure 4(m) generally requires that a defendant be served within 120 days after the complaint is filed. Here, however, it has been more than 120 days since the complaint was filed and, as of the date of this Order, no Defendant has been served in this action.

Based on the foregoing, the Court HEREBY ORDERS Plaintiffs to show cause as to (1) why Plaintiffs' counsel failed to appear at the January 24, 2013 CMC, and (2) why this action should not be dismissed without prejudice due to Plaintiffs' failure to comply with Rule 4(m).

The Court sets a hearing on the Order to Show Cause for February 14, 2013 at 9:00 a.m. Plaintiffs' counsel must appear in person. Plaintiffs are further ordered to file a written response to this Order by February 7, 2013. Failure to comply with this Order may result in dismissal of the lawsuit.

IT IS SO ORDERED.

Dated: January 24, 2013



JACQUELINE SCOTT CORLEY
UNITED STATES MAGISTRATE JUDGE