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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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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 TO
STANLEY BURNETT GRANVILLE
AND DISMISSING CASE WITHOUT
PREJUDICE**

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.

On January 25, 2013, the Court issued an Order to Show Cause (“OSC”), ordering 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 Federal Rule of Civil Procedure 4(m), which generally requires that a defendant be served within 120 days after the complaint is filed. (*See* Dkt. No. 17.) The Court set a hearing on the OSC for February 14, 2013 at 9:00 a.m., and required Plaintiffs’ counsel to appear in person. Plaintiffs were further ordered to file a written response to the OSC by February 7, 2013. The Court warned that failure to comply with the OSC may result in dismissal of the lawsuit.

On February 4, 2013, Plaintiffs responded to the OSC, informing the Court “that according to Kate Morgan of Languard America, Inc. who is the representative of [our] attorney Stanley B. Granville he will not appear for the Order to Show Cause unless we paid his time and expense to appear which would be about \$2,000.” (*See* Dkt. No. 18.) Plaintiffs requested that the Court dismiss their case without prejudice. (*Id.*) On February 14, 2013, Plaintiffs’ counsel failed to appear at the hearing on the OSC or to notify the Court that he would not be appearing.

The Court DISMISSES the action without prejudice pursuant to Rule 4(m). In addition, due to Plaintiffs’ counsel’s failure to comply with the Court’s orders and his apparent failure to prosecute his clients’ case, the Court HEREBY ORDERS Plaintiffs’ counsel to show cause as to why he should not be referred to the Court’s Standing Committee on Professional Conduct pursuant to Civil Local Rule 11-6(a)(1).

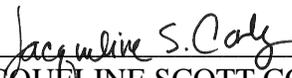
The Court sets a hearing on the Order to Show Cause for February 28, 2013 at 9:00 a.m. Plaintiffs’ counsel must appear in person. Plaintiffs’ counsel is further ordered to file a written response to this Order by February 21, 2013.

IT IS SO ORDERED.

United States District Court
Northern District of California

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Dated: February 14, 2013



JACQUELINE SCOTT CORLEY
UNITED STATES MAGISTRATE JUDGE