

United States District Court  
For the Northern District of California

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

ANTONIO R. BARRIENTOS,	)	Case No. 12-4653-SC
	)	
Plaintiff,	)	<u>ORDER TO SHOW CAUSE</u>
	)	
v.	)	
	)	
CITIMORTGAGE, INC., and DOES 1-10,	)	
inclusive,	)	
	)	
Defendants.	)	
_____	)	

On July 26, 2012, Plaintiff Antonio R. Barrientos ("Plaintiff") instituted this action challenging a mortgage foreclosure by filing a complaint in the California Superior Court against Defendant CitiMortgage, Inc. ("Defendant"). ECF No. 1 (notice of removal ("NOR") Ex. A ("Compl.")). Defendant was served with process on August 9. NOR ¶ 1. On September 6, Defendant timely removed the case to this Court.

On September 17, Defendant filed a motion to dismiss the action. ECF No. 11 ("Mot."). Plaintiff was required to file an opposition brief or a notice of nonopposition by October 1. See Civ. L.R. 7-3. Plaintiff did neither. On October 3, Defendant filed a brief urging the Court to grant its motion as unopposed and dismiss this action with prejudice. ECF No. 13.

1 The dismissal Defendant seeks is well within the Court's  
2 power. See Pagtalunan v. Galaza, 291 F.3d 639, 642-43 (setting  
3 forth factors district court must consider before dismissing action  
4 for plaintiff's failure to prosecute or comply with court order).  
5 Moreover, it appears to be warranted, since Plaintiff is  
6 represented by counsel and had ample opportunity to respond to  
7 Defendant's motion. Cf. Weavill v. Wachovia Mortg., FSB, C 11-  
8 05541 SBA, 2012 WL 2055021, at \*2 (N.D. Cal. June 5, 2012)  
9 (weighing Pagtalunan factors and dismissing mortgage foreclosure  
10 case). However, the Court declines to dismiss the case at this  
11 time because a less drastic alternative is available. Pagtalunan,  
12 291 F.3d at 643.

13 Instead, the Court ORDERS Plaintiff to show cause why this  
14 action should not be dismissed for failure to prosecute. No  
15 hearing shall be held. Civ. L.R. 7-1(b). Within seven (7) days of  
16 the signature date of this order, Plaintiff shall file a brief of  
17 no more than three (3) pages in length, exclusive of supporting  
18 declarations and exhibits, if any. The brief shall explain why  
19 Plaintiff failed to comply with Civil Local Rule 7-3. Failure to  
20 timely submit this brief shall result in dismissal of Plaintiff's  
21 case with prejudice.

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23 IT IS SO ORDERED.

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25 Dated: November 8, 2012

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UNITED STATES DISTRICT JUDGE

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