

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

REYNA U. ZACHARIAS,)	Case No. 14-02186 SC
)	
Plaintiff,)	ORDER RE: PLAINTIFF'S
)	<u>"REQUEST" FOR DISMISSAL</u>
v.)	
)	
U.S. BANK N.A.; JP MORGAN CHASE)	
BANK, N.A.; BANK OF AMERICA, N.A.;)	
AND DOES 1-10, INCLUSIVE,)	
)	
Defendants.)	
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Now before the Court is a request by Plaintiff Reyna U. Zacharias to dismiss her claims without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). ECF No. 41 ("Voluntary Dismissal"). In response Defendants U.S. Bank and JP Morgan Chase ("Chase") have filed notices pointing out Plaintiff's failure to comply with the Court's earlier order granting in part and denying in part Defendants' motion to dismiss, ECF No. 39 ("MTD Order"). ECF Nos. 42 ("U.S. Bank Notice"); 43 ("Chase Notice"). While the Court concludes it lacks jurisdiction to consider the

1 issues raised in Defendants' notices because Plaintiff's notice of
2 voluntary dismissal immediately and automatically divested the
3 Court of jurisdiction, the Court nonetheless writes to clarify two
4 remaining issues for the parties.

5 In the Court's prior order on Defendants' motion to dismiss,
6 the Court dismissed all of Plaintiff's claims with prejudice except
7 her claims under California Civil Code Section 2923.5. The Court
8 dismissed the Section 2923.5 claims as time-barred and granted
9 Plaintiff thirty days to file an amended complaint pleading "why,
10 if at all, the statute of limitations should be tolled." MTD Order
11 at 20. The deadline to file an amended complaint was September 19,
12 2014, however Plaintiff failed to file an amended complaint by that
13 date. Instead, ten days later on September 29, 2014 Plaintiff
14 filed a notice requesting "that the Complaint and all causes of
15 action be dismissed pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i) and
16 this request, without prejudice, each party to bear its own costs
17 and fees." Voluntary Dismissal at 1.

18 Defendants argue that the Court should dismiss Plaintiff's
19 claims, but contends the dismissal should be with prejudice for two
20 reasons. First, Defendants points to Plaintiff and her counsel's
21 repeated pattern of ignoring Court orders and serially refileing
22 claims "simply to stall enforcement of obligations under her deed
23 of trust relating to the Property." U.S. Bank Notice at 1.
24 Second, Defendants suggest that because "the plaintiff previously
25 dismissed [a] federal- or state-court action based on or including
26 the same claim," her notice of dismissal should "operate[] as an
27 adjudication on the merits." Fed. R. Civ. P. 41(a)(1)(B). This is
28 the so-called "two-dismissal rule." See Thomas v. Wells Fargo

1 Bank, N.A., No. 13-02065 JSW, 2013 WL 5313458, at *2 (N.D. Cal.
2 Sept. 23, 2013).

3 While Defendants may well be right about both issues, it is
4 not appropriate for them to raise them at this time. Under Rule
5 41(a)(1), "a plaintiff has an absolute right voluntarily to dismiss
6 his action prior to service by the defendant of an answer or a
7 motion for summary judgment." Concha v. London, 62 F.3d 1493, 1506
8 (9th Cir. 1995). This is true even if, as here, Defendants have
9 previously filed a motion to dismiss. Id. Most importantly here,
10 "[t]he dismissal is effective on filing and no court order is
11 required." Id. (emphasis added). In other words, simply filing a
12 notice of voluntarily dismissal functions to automatically
13 terminate the action. Id. As a result, the mere filing of a
14 notice of dismissal under the circumstances described in Rule
15 41(a)(1) deprives the Court of jurisdiction to consider the merits
16 of the case or issue further orders. 8 Moore's Fed. Prac. §
17 41.33[6][e]; see also Pedrina v. Chun, 987 F.2d 608, 610 (9th Cir.
18 1993). Accordingly, the Court lacks jurisdiction to entertain
19 Defendants' objections or opine as to the application of the two-
20 dismissal rule. If Defendants wish to raise these issues they must
21 do so when and if Plaintiff chooses to file another action.

22 Nevertheless the Court writes to clarify two points for the
23 parties. First, Plaintiff's notice of dismissal includes a
24 proposed order. This is unnecessary because Plaintiff, with or
25 without leave of the Court, has an absolute right to dismiss her
26 claims under these circumstances. Pedrina, 987 F.2d at 610.
27 Accordingly the Court will not sign Plaintiff's proposed order, and
28 instead DIRECTS the Clerk to terminate this action. Second,

1 despite lacking jurisdiction to dismiss the action with prejudice
2 or otherwise determine the impact of Plaintiff's second voluntary
3 dismissal, see Zacharias v. JP Morgan Chase Bank, Inc., No. 12-cv-
4 6525-SC, ECF No. 53 ("Stip. of Dismissal"), the Court wishes to
5 point out Plaintiff's repeated failure to comply with Court orders.
6 The Court has now dismissed Plaintiff's claims three times.
7 Between this action and the related case, Plaintiff and her counsel
8 have repeatedly failed to comply with the Court's orders by
9 refiling claims previously dismissed with prejudice, adding
10 unauthorized amendments to pleadings, filing an irrelevant and
11 frivolous opposition brief, failing promptly to comply with the
12 Court's order to share a copy of a prior dismissal order with
13 Plaintiff, and now failing to file an amended complaint in the time
14 permitted. As a result the Court now warns Plaintiff: repeated
15 failure to comply with court orders may itself be an appropriate
16 grounds for dismissal with prejudice, and the Court may do so sua
17 sponte. See McClure v. Fessler, 57 F. App'x 727, 727 (9th Cir.
18 2003) (citing Ash v. Cvetkov, 739 F.2d 493, 496 (9th Cir. 1984)).

19 The Clerk shall terminate the case.

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21 IT IS SO ORDERED.

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23 Dated: October 27, 2014


UNITED STATES DISTRICT JUDGE

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