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

MICHELLE SIMPSON,

Plaintiff,

v.

GMAC MORTGAGE, LLC DBA
DITECH.COM, et al.,

Defendants.

Case No. [18-cv-02111-MMC](#)

**ORDER DISCHARGING ORDER TO
SHOW CAUSE; GRANTING
DEFENDANTS' MOTION TO DISMISS;
VACATING CASE MANAGEMENT
CONFERENCE**

Re: Dkt. No. 31

On October 12, 2018, plaintiff failed to appear at the noticed hearing on defendants' motion to dismiss plaintiff's First Amended Complaint ("FAC"). Defendants' counsel appeared and the Court took the opportunity to identify on the record at that time a number of deficiencies in said pleading, which, if not cured by amendment, would likely result in dismissal of the action.

Thereafter, on October 16, 2018, the Court issued an order directing plaintiff's counsel to show cause in writing why sanctions should not be imposed for his failure to appear on behalf of plaintiff. (See Doc. No. 40 (Order to Show Cause).) By the same order, the Court also directed counsel to set forth in detail in his response thereto any additional facts plaintiff, if given leave to amend, could add in an effort to cure the deficiencies identified on the record by the Court. On October 30, 2018, counsel filed a Declaration in response to the Order to Show Cause.

Having read and considered counsel's Declaration, the Court rules as follows.

First, the Court finds counsel's stated reason, namely a "calendar error" (see Decl. ¶3), does not constitute good cause for his failure to appear. Nevertheless, as set forth below, no additional hearing on defendants' motion will be required, and,

1 consequently, the Court finds defendants have not incurred unnecessary costs as a
2 result of plaintiff's failure to appear. Under such circumstances, and because plaintiff's
3 counsel, in failing to appear, did not act in bad faith, no sanctions will be imposed and
4 the Order to Show Cause is hereby DISCHARGED.


5 Second, counsel has failed to identify any facts plaintiff could plead in an effort to
6 cure the deficiencies in the FAC that were noted by the Court on the record at the hearing
7 as well as summarized in its Order to Show Cause.

8 Accordingly, defendants' motion to dismiss is hereby GRANTED and the above-
9 titled action is hereby DISMISSED without further leave to amend.¹

10 In light of the above, the Case Management Conference currently scheduled for
11 November 16, 2018, is hereby VACATED.

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13 **IT IS SO ORDERED.**

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15 Dated: November 6, 2018


MAXINE M. CHESNEY
United States District Judge

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27 _____
28 ¹ Unless otherwise ordered hereafter, counsel's motion to withdraw as attorney of
record for plaintiff remains as scheduled for hearing on November 30, 2018.