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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FLORANTE BAUTISTA,
Plaintiff,

No. C 09-596 WDB

ORDER IN RESPONSE TO
PLAINTIFF'S MAY 4, 2009,
SUBMISSION

v.

WASHINGTON MUTUAL
BANK, et al.

Defendants.
_____ /

The Court has received plaintiff's "Motion for Reconsideration in Support of Plaintiffs, Non-Appearance on Scheduled Hearing on April 27, 2009, 2:30 PM," filed May 4, 2009.

The Court has some serious questions about the accuracy of the excuse Mr. Bautista has provided to explain his failure to appear at the April 27th court proceedings.

By May 12, 2009, at 4:00 p.m., Mr. Bautista must file with the Court and serve on opposing counsel a declaration signed under penalty of perjury that explains in detail the following.

- (1) On what date did plaintiff receive the defendants' Motion to Dismiss for Failure to State a Claim? Defendants have filed a Proof of Service indicating that this document was mailed to Mr. Bautista on March 12, 2009, to 234 Morton Dr., Daly City, California 94015. If Mr. Bautista

1 contends that he did not receive this document until after March 19, 2009
2 (*i.e.*, within one week after mailing), then plaintiff must explain the
3 circumstances that resulted in his not receiving the document until after
4 that date.

5 (2) Mr. Bautista asserts that he was out of the country from March 10, 2009
6 until April 25, 2009. If plaintiff was out of the country during this period
7 how was plaintiff able to sign and file (a) plaintiff's Consent to
8 Magistrate Judge jurisdiction, filed April 3, 2009, and (b) plaintiff's
9 Response to Show Cause of Substantiality, filed April 13, 2009?

10 (3) Plaintiff's April 3rd filing appears to have been filed in response to this
11 Court's Clerk's Notice requiring the parties to consent or request
12 reassignment by April 6, 2009. See, Clerk's Notice, filed March 19,
13 2009. Plaintiff's April 13th filing appears to have been filed in response
14 to this Court's Order extending plaintiff's deadline for filing an
15 opposition to defendants' Motion to Dismiss until April 13, 2009. See,
16 Order re Pending Motion to Dismiss, filed April 7, 2009. The Court
17 mailed both the Clerk's Notice and the Court's Order re Pending Motion
18 to Dismiss to plaintiff during the period he claims to have been out of the
19 country. Nonetheless, plaintiff was able to respond in a timely manner to
20 both of these directives from the Court. If plaintiff contends that he did
21 not receive defendants' Motion to Dismiss, mailed to plaintiff in Daly
22 City on March 12th, (see item (1) above) or that he received it but was
23 unable to respond to it, explain why plaintiff received and was able to
24 respond to the directives from the Court that were mailed to the same
25 address during the same period.

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1 If plaintiff chooses not to respond to this Order or if the Court finds that
2 plaintiff's response to this Order is clearly insufficient to accurately explain his failure
3 to appear at this Court's April 27th proceedings, **the Court WILL DISMISS**
4 **plaintiff's complaint WITH PREJUDICE for the reasons stated in this Court's**
5 **Conditional Order Dismissing With Prejudice Complaint Filed February 10,**
6 **2009, filed April 28, 2009.**

7 **IT IS SO ORDERED.**

8 Dated: May 5, 2009

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10 WAYNE D. BRAZIL
11 United States Magistrate Judge

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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 Florante Bautista,
5 Plaintiff,

Case Number: C 09-596 WDB

CERTIFICATE OF SERVICE

6 v.

7 Washington Mutual Bank, et al.,
8 Defendants.

9 I, the undersigned, hereby certify that I am an employee in Office of the Clerk, U.S. District Court,
10 Northern District of California.

11 That on May 5, 2009, I SERVED a true and correct copy(ies) of the attached Order by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

15 Florante Bautista
16 234 Morton Drive
17 Daly City, CA, 94015

18 Dated: May 5, 2009

Richard W. Wieking, Clerk

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20 *Michelle Sicula*

21 By: Michelle Sicula, Law Clerk/Deputy Clerk
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