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3 UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
5 OAKLAND DIVISION

6 THOMAS M. DEAL,
7 Plaintiff,

8 vs.

9 COUNTRYWIDE HOME LOANS, et al.,
10 Defendants.

Case No: C 09-01643 SBA

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION TO GRANT
SUBSTITUTION AND MOTION FOR
CONTINUANCE**

Dkt. 43, 45

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13 On August 8, 2008, Plaintiff filed this wrongful foreclosure action against Defendants
14 in the Superior Court of California, County of Alameda, alleging violations of various state and
15 federal laws. This action was removed to this Court on April 15, 2009. Plaintiff's counsel,
16 Patricia Turnage and Glenn Moss, filed a Motion to Withdraw as Counsel on March 31, 2010.
17 Plaintiff opposed his counsel's motion. The Court subsequently denied counsel's motion to
18 withdraw. See Dkt. 42.

19 Now, Plaintiff has filed a Motion to Grant Substitution and Motion for Continuance
20 ("Plaintiff's Motion"), whereby he asks that his counsel be permitted to withdraw, that he be
21 allowed to proceed pro se until he acquires new counsel, and that the March 1, 2011 hearing on
22 Defendants' pending Motion to Dismiss under Federal Rule of Civil Procedure 41(b) (Dkt. 43)
23 be continued to allow for the preparation of an opposition to the motion. Dkt. 45. Plaintiff also
24 requests, without providing any authority or factual support, for an order requiring his counsel
25 to return a portion of the retainer he paid to counsel and for the return of his files. Having
26 considered Plaintiff's Motion,

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1 IT IS HEREBY ORDERED THAT:

2 1. Plaintiff's Motion is GRANTED IN PART and DENIED IN PART as follows:

3 a. Plaintiff's request to allow his counsel to withdraw is GRANTED.

4 Patricia Turnage and Glenn Moss are no longer counsel of record for Plaintiff and shall
5 be terminated in ECF. Turnage and Moss shall immediately serve Plaintiff with a copy
6 of this Order and shall thereafter file a proof of service to confirm the same. Should
7 Plaintiff desire to obtain new counsel, Plaintiff shall have thirty-five (35) days from the
8 date this Order is filed to secure counsel and for such counsel to enter an appearance in
9 this matter. Should Plaintiff decide to proceed pro se, he is advised that pro se parties
10 are obligated to follow the same rules as represented parties. See King v. Atiyeh, 814
11 F.2d 565, 567 (9th Cir. 1987) (finding that pro per litigants must follow the same
12 procedural rules as represented parties). Self-representation is not an excuse for non-
13 compliance with court rules. See Swimmer v. I.R.S., 811 F.2d 1343, 1344 (9th Cir.
14 1987) (“[i]gnorance of court rules does not constitute excusable neglect, even if the
15 litigant appears pro se.”) (citation omitted). It is a pro se plaintiff's responsibility to
16 proceed in a manner consistent with the Federal Rules of Civil Procedure, the Court's
17 Local Rules, and the standing and other orders of this Court. Failure to comply with
18 any of these requirements may result in the imposition of sanctions.

19 b. Defendants' Motion to Dismiss (Dkt. 43) is DENIED without prejudice,
20 and Plaintiff's request to continue the hearing date on that motion is DENIED as
21 MOOT. Defendants may re-file their Motion to Dismiss within ten (10) days of entry
22 of appearance by Plaintiff's new counsel, or forty-five (45) days from the date this
23 Order is filed, whichever deadline occurs sooner. Plaintiff is advised that whether he
24 proceeds with new counsel or on a pro se basis, any opposition to Defendants' Motion
25 to Dismiss, if re-filed, must be filed in accordance with Civil Local Rule 7-3. The
26 failure to timely file an opposition may be construed as a consent to the granting of the
27 motion.

28 c. Plaintiff's Motion is DENIED in all other respects.

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2. The March 1, 2011 hearing on Defendants' Motion to Dismiss is VACATED.

3. This Order terminates Dockets 43 and 45.

IT IS SO ORDERED.

Dated: 1/31/11



SAUNDRA BROWN ARMSTRONG
United States District Judge

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

4 THOMAS M DEAL,
5
6 Plaintiff,

7 v.

8 COUNTRYWIDE HOME LOANS et al,
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10 _____/

Case Number: CV09-01643 SBA

11 **CERTIFICATE OF SERVICE**

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

14 That on January 31, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
16 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
17 located in the Clerk's office.

18 Thomas M. Deal
19 2950 Union Avenue
20 Hayward, CA 94541

21 Dated: January 31, 2011

Richard W. Wieking, Clerk

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By: LISA R CLARK, Deputy Clerk

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