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United States District Court
Northern District of California

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MARCUS BENFORD,
Plaintiff,
vs.
J.P. MORGAN CHASE BANK, N.A. A/K/A
CHASE MORTGAGE SERVICES, INC.,
Defendant.

Case No.: 13-CV-3145 YGR
ORDER STRIKING FILING

On December 6, 2013, *pro se* Plaintiff Marcus Benford filed a complaint in California state court, challenging alleged irregularities in foreclosure and home loan modification proceedings conducted in 2009. Defendant was served on June 10, 2013 and timely removed to this Court on July 9, 2013. *See* Dkt. No. 1. Defendant moved to dismiss the complaint on July 16, 2013. Dkt. No. 6. Plaintiff’s opposition was due on July 30, 2013. The motion was set for oral argument on September 17, 2013.¹

The July 30 opposition deadline passed without Plaintiff filing an opposition or otherwise appearing before this Court. Accordingly, on August 1, 2013, the Court issued an order: extending Plaintiff’s time to respond to the pending motion to dismiss to August 15; warning Plaintiff that failure to respond would result in dismissal of his case for failure to prosecute; and referring Plaintiff to the Court’s Legal Help Center, which may assist *pro se* plaintiffs who make an appointment. On

¹ The case was originally assigned to Magistrate Judge Laporte, and the hearing noticed for her September 17 calendar. However, on July 22, 2013, Defendant declined Magistrate Judge Laporte’s jurisdiction. Dkt. No. 9. The case was subsequently reassigned to the undersigned judge and renoticed for *her* September 17, 2013 calendar.

1 August 20, 2013, having received no response from Plaintiff by the extended deadline, the Court
2 dismissed Plaintiff's action without prejudice. Dkt. No. 16. In so doing, the Court vacated the
3 September 17 motion hearing. *Id.* The Clerk served Plaintiff with notice of the Court's dismissal of
4 his case. Dkt. No. 18.

5 On September 19, 2013, two days after Defendant's motion would have been heard, Plaintiff
6 made his first appearance before this Court by filing a document styled as "Plaintiff's Opposition to
7 Defendant['s] Motion to Dismiss Plaintiff's Complaint." Dkt. No. 19. The Court appreciates that
8 the Opposition signals Plaintiff's intent to begin to prosecute his case here in federal court.
9 However, although Plaintiff has filed an opposition, there is no motion to dismiss left to oppose.
10 Moreover, Plaintiff's case *has already been dismissed*. Plaintiff's filing is therefore without legal
11 effect and shall be struck.

12 If Plaintiff now intends to prosecute his case, he must first seek to have his case reopened.
13 Pursuant to Federal Rule of Civil Procedure 60(b), Plaintiff may file a motion to set aside the Court's
14 previous order of dismissal. Simply filing this motion will not necessarily result in having the case
15 reopened; rather, Plaintiff must first make the showing required under the law.

16 The Court reminds Plaintiff that he may contact the Court's Legal Help Center to seek
17 assistance with filing his papers. In the time since Plaintiff's case was dismissed, the Legal Help
18 Center has opened a branch in Oakland. Plaintiff may make an appointment with either the San
19 Francisco or Oakland Legal Help Center by calling (415) 782-8982.

20 The Court hereby **ORDERS** the Clerk to **STRIKE** Docket No. 19.

21 **IT IS SO ORDERED.**

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23 Date: September 19, 2013

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YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE