

United States District Court  
For the Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DEBRA GARCIA,

Plaintiff,

v.

WELLS FARGO BANK N.A., et al.,

Defendants.

No. C 13-3670 PJH

**ORDER GRANTING MOTION TO  
WITHDRAW; ORDER TO SHOW  
CAUSE RE DISMISSAL FOR FAILURE  
TO PROSECUTE**

Plaintiff’s counsel’s motion to withdraw came on for hearing before this court on April 16, 2014. Plaintiff Debra Garcia (“plaintiff”) did not appear at the hearing. Eunji Cho appeared on behalf of plaintiff’s counsel (the Mellen Law Firm). The Mellen Law Firm seeks withdrawal based on “the loss of meaningful contact with plaintiff following a serious and irreconcilable conflict of interest between the Mellen Law Firm and plaintiff.” See Dkt. 31 at 1. At the hearing, the Mellen Law Firm indicated that, despite their efforts, they have not been able to make contact with plaintiff for several months.

The court further notes that plaintiff has failed to meet two deadlines set by this court. First, plaintiff was required to respond to the Mellen Law Firm’s motion by March 18, 2014. Plaintiff filed no such response. As a result, the court issued an order on April 1, 2014, noting plaintiff’s lack of response to the motion, and directing her to file “either an opposition brief or a notice of non-opposition by April 9, 2014.” See Dkt. 36 at 1. Plaintiff filed no response to the court’s April 9 order. Thus, in the absence of any opposition to the Mellen Law Firm’s motion, the court hereby GRANTS the motion to withdraw as counsel.

While substitute counsel has not yet appeared in this case, and while plaintiff has not expressly agreed to proceed in pro per, the court will not require the Mellen Law Firm to

1 accept service on behalf of plaintiff, based on their loss of all contact with plaintiff. Instead,  
2 plaintiff is hereby ORDERED to SHOW CAUSE as to why this action should not be  
3 dismissed for failure to prosecute, under Federal Rule of Civil Procedure 41(b). Plaintiff is  
4 directed to file a notice of appearance on her own behalf, or to have substitute counsel file  
5 a notice of appearance, by **May 14, 2014**. If no such notice is filed by that date, the case  
6 will be dismissed.

7 Finally, the court notes that defendant has filed a motion to dismiss under Rule  
8 12(b)(6), currently set for hearing on June 7, 2014. Plaintiff's opposition to the motion was  
9 originally due on April 7, 2014, but the deadline was continued to May 7, 2014, based on  
10 the pendency of this motion to withdraw. Given this court's order to show cause, the court  
11 shall again continue the briefing schedule, to allow plaintiff an opportunity to respond to this  
12 order. Plaintiff's opposition to defendant's motion to dismiss shall be filed by **May 14, 2014**.  
13 Defendant's reply shall be filed by **May 21, 2014**, and the June 7, 2014 hearing shall  
14 remain on the court's calendar.

15 **IT IS SO ORDERED.**

16 Dated: April 16, 2014



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PHYLLIS J. HAMILTON  
United States District Judge