

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KRISTINE BARNES,
Plaintiff,
v.
RICK MORTELL, et al.,
Defendants.

Case No. [4:14-cv-02373-KAW](#)

**SECOND ORDER TO SHOW CAUSE
TO PLAINTIFF**

Re: Dkt. Nos. 139, 140

On June 21, 2017, the Court expunged the lis pendens on the Mortell residence in The Woodlands, Texas. Pursuant to a stipulation of the parties and lender Wells Fargo Bank, the Mortells were given 180 days to market and sell the subject property, the proceeds of which would provide funds for the settlement and pay off the arrears on the mortgage. (*See* Dkt. No. 135.) On January 11, 2018, long after the 180 day period had passed, the undersigned issued a third joint status report order, and informed the parties that “[i]f performance has not occurred, the parties shall file joint status reports every 45 days until a dismissal is filed.” (Dkt. No. 137.) On January 25, 2018, Plaintiff filed a status report and informed the Court that the Mortell residence had not sold, that it remained the only source of funds for the settlement, and that Wells Fargo Bank had initiated foreclosure proceedings with a sale date of March 6, 2018. (Dkt. No. 138). Plaintiff further represented that if the property sold at a foreclosure sale, there would be no funds to pay the settlement and “[t]he case would effectively end.” *Id.*

On June 29, 2018, the undersigned issued a fourth status report order and an order to show requiring Plaintiff to file a status report by July 13, 2018 explaining whether performance has occurred and, if not, when it is expected, if ever. (Dkt. No. 139 at 1.) The Court provided that Plaintiff would be excused from filing the status report order, and the order to show cause would

1 be automatically discharged should a dismissal be filed by July 13, 2018. *Id.* at 2.

2 On July 12, 2018, Plaintiff filed a status report and informed the Court that the Mortell
3 residence was sold at a foreclosure sale on July 3, 2018, that there were no surplus funds, and that
4 the case could be dismissed. (Dkt. No. 140.) Plaintiff did not address why she had not complied
5 with the Court's prior order to furnish regular status reports nor why sanctions in the amount of
6 \$250.00 should not be imposed against counsel personally. *See id.*

7 On July 13, 2018, the Court issued an order instructing Plaintiff to file a dismissal with
8 prejudice within 7 days. To date, Plaintiff has not done so, and Plaintiff's counsel's telephone
9 number of record is disconnected. Accordingly, the Court issues a SECOND ORDER TO SHOW
10 CAUSE to Plaintiff to explain why she has not filed the dismissal as ordered. Failure to respond to
11 the second order to show cause by **August 10, 2018** will result in the case being dismissed with
12 prejudice for failure to prosecute.

13 Plaintiff shall immediately furnish Mr. Mortell with a copy of this order.

14 IT IS SO ORDERED.

15 Dated: July 27, 2018

16 
KANDIS A. WESTMORE
17 United States Magistrate Judge