

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

5 IDA MAE BARDWELL,

6 Plaintiff,

7 vs.

8 BANK OF AMERICA,

9 Defendant.
10

Case No: C 17-3212 SBA

**ORDER TO SHOW CAUSE RE
DISMISSAL**

11 On June 5, 2017, Plaintiff Ida Mae Bardwell (“Plaintiff”) filed a pro se wrongful
12 foreclosure Complaint against Bank of America (“Defendant”). The same day, the Court issued an
13 Order directing Plaintiff to file her ADR Certification along with a Stipulation to ADR Process or
14 Notice for Need for ADR Phone Conference by August 18, 2017. Dkt. 3. In a separate Order,
15 Plaintiff was ordered to file her Joint Case Management Statement by no later than September 7,
16 2017, and to appear for the conference on September 14, 2017. Dkt. 7. Plaintiff has complied with
17 none of those requirements.

18 “Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss an action
19 for failure to comply with any order of the court.” Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th
20 Cir. 1992). In considering whether to dismiss a case under Rule 41(b), “the district court must
21 weigh the following factors . . . : (1) the public’s interest in expeditious resolution of litigation; (2)
22 the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
23 policy favoring disposition of cases on their merits and (5) the availability of less drastic
24 sanctions.” Omstead v. Dell, Inc., 594 F.3d 1081, 1084 (9th Cir. 2010) (quoting Henderson v.
25 Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986)). Dismissal is appropriate “where at least four
26 factors support dismissal ... or where at least three factors ‘strongly’ support dismissal.”
27 Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998).
28

1 Separate from the above, the Court notes that there is no indication in the record that
2 Plaintiff has served Defendant within ninety days of the filing of the Complaint. See Fed. R. Civ.
3 P. 4(m). A court may dismiss an action without prejudice if the summons and complaint are not
4 served on the defendants within 90 days or such further time as ordered by the court. Id.; see also
5 Efaw v. Williams, 473 F.3d 1038, 1041 (9th Cir. 2007). Rule 4(m) requires the court to extend the
6 time for service if a plaintiff shows good cause for the failure to timely serve the complaint. As a
7 general matter, a showing of good cause requires more than simple inadvertence or a mistake.
8 Wei v. State of Hawaii, 763 F.2d 370, 371-72 (9th Cir. 1985) (per curiam). “At a minimum, good
9 cause means excusable neglect.” Boudette v. Barnette, 923 F.2d 754, 756 (9th Cir. 1991).

10 Accordingly,

11 IT IS HEREBY ORDERED THAT Plaintiff shall show cause why the instant action should
12 not be dismissed under (a) Federal Rule of Civil Procedure 41(b) for failure to comply with a court
13 order and (b) Federal Rule of Civil Procedure 4(m) for failure to serve the Complaint on Defendant
14 within ninety days of the filing of the Complaint. Within fourteen (14) days of the date this order
15 is filed, Plaintiff shall file a written memorandum, supported with a declaration if appropriate, to
16 explain why the case should or should not be dismissed, taking into account the five factors set
17 forth above relevant to Rule 41(b) and the “good cause” requirement under Rule 4(m). In addition,
18 the memorandum shall set forth the nature of the cause, its present status, the reason it has not been
19 brought to trial or otherwise terminated, any basis for opposing dismissal and its expected course if
20 not dismissed. FAILURE TO FULLY COMPLY WITH THIS ORDER WILL BE DEEMED
21 SUFFICIENT GROUNDS TO DISMISS THE ACTION, WITHOUT FURTHER NOTICE.

22 IT IS SO ORDERED.

23 Dated: September 14, 2017


SAUNDRA BROWN ARMSTRONG
Senior United States District Judge

24
25
26
27
28