

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MARGARITA M. SANCHEZ,)	Case No.: 11-CV-00959-LHK
)	
Plaintiff,)	
)	
v.)	ORDER GRANTING PLAINTIFF
)	LEAVE TO FILE OPPOSITION TO
WACHOVIA MORTGAGE CORPORATION,)	DEFENDANT’S MOTION TO DISMISS
WELLS FARGO BANK, N.A., NDEX WEST,)	
LLC, and Does 1-100, inclusive,)	
)	
Defendants.)	

On February 22, 2011, Plaintiff filed a complaint in the Superior Court of Monterey County alleging claims of negligence, negligence per se, and fraud against defendants. *See* Compl. (Dkt. No. 1, Ex. A). In the Complaint, Plaintiff sought a Temporary Restraining Order (TRO) to enjoin a foreclosure sale set for February 22, 2011 on her property at 4895 Peninsula Point Drive, Seaside, CA 93955. *See* Compl. at 5. Plaintiff alleged that defendants have refused to modify her loan in bad faith.

On March 1, 2011, defendant Wachovia Mortgage (a division of Wells Fargo Bank, N.A.) (Defendant) removed the case to this Court on the basis of diversity jurisdiction. *See* Removal. On March 22, 2011, Defendant filed a Motion to Dismiss all the causes of action in the Complaint, and a Motion to Strike. The hearing on these Motions was set for April 28, 2011. Therefore, Plaintiff’s Opposition to both Motions was due on April 7, 2011. *See* Civ. L.R. 7-3. Plaintiff filed no Opposition, or statement of nonopposition, in violation of Civil Local Rule 7-3.

1 On April 14, 2011, this Court issued an order denying Plaintiff's *ex parte* Application for
2 Temporary Restraining Order (TRO) seeking to enjoin a foreclosure sale set for April 15, 2011.
3 *See* Dkt. No. 15. The Court found that Plaintiff had not articulated a likelihood of success on the
4 merits of her claim, and that Plaintiff's delay in bringing the application weighed against the
5 fairness of granting her request. The Court also ordered Plaintiff to show cause why her case
6 should not be dismissed for failure to prosecute in light of her failure to oppose Defendant's
7 Motions to Dismiss and Strike filed on March 22, 2011.

8 On April 18, 2011, Plaintiff filed a "renewed" *ex parte* Application for a TRO enjoining the
9 sale. Because the renewed TRO Application raised no new, persuasive legal or factual bases
10 indicating a likelihood of success on the merits, the Court denied the Application the day it was
11 filed.

12 Plaintiff's attorney responded to the Order to Show Cause (OSC), claiming that Defendant
13 falsified the proof of service of the removal papers and that she did not receive notice of the
14 removal of the case until March 21, 2011. Plaintiff's attorney states that she is "attaching . . .
15 documents" evidencing proof of Defendant's "fraud" on the Court, but nothing was attached to
16 Plaintiffs' filing. Plaintiff's attorney also stated that Defendant had agreed to withdraw the Motion
17 to Dismiss, and that that was the reason she did not file an opposition or statement of
18 nonopposition to that Motion. Finally, Plaintiff's attorney stated that she had a serious medical
19 problem in mid-March.

20 Defendant responded to the allegations regarding falsification of proofs of service and the
21 alleged agreement to withdraw the Motion to Dismiss. Based on Defendant's submission, the
22 Court finds that Plaintiff's attorney's allegations are untrue. Should Plaintiff's attorney submit
23 further bad faith allegations to the Court, she is warned that the Court may order her to show cause
24 why sanctions should not be imposed.

25 Because Plaintiff's attorney claims that she suffered a serious medical problem in March,
26 the Court hereby grants Plaintiff leave to file an Opposition to Defendant's Motion to Dismiss and
27 Motion to Strike within **14 days of the date of this Order**. If Plaintiff fails to file an Opposition,
28 this case will be dismissed with prejudice.

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IT IS SO ORDERED.

Dated: April 28, 2011



LUCY H. KOH
United States District Judge