

NELSON R. HERRERA, an individual; ) Case No.: 5:11-CV-03591-LHK  
NENEETH T. HERRERA, an individual, )  
 )  
Plaintiffs, ) ORDER TO SHOW CAUSE WHY CASE  
v. ) SHOULD NOT BE DISMISSED FOR  
 ) FAILURE TO PROSECUTE  
COUNTRYWIDE KB HOME LOANS, A )  
COUNTRYWIDE MORTGAGE VENTURES )  
LLC, a Delaware Limited Liability Corporation; )  
BAC HOME LOAN SERVICING, LP, a )  
Business Entity, form unknown; CITIBANK, )  
N.A.; RECONTRUST COMPANY, a Business )  
Entity, form unknown; MORTGAGE )  
ELECTRONIC REGISTRATION SYSTEMS, )  
INC., a Delaware Corporation; and DOES 1 )  
through 50, inclusive, )  
 )  
Defendants. )

Plaintiffs Nelson R. Herrera and Nenebeth T. Herrera (collectively “Plaintiffs”) filed their complaint in state court on June 2, 2011, which Defendants then removed to federal court on July 21, 2011. *See* ECF No. 1. On July 27, 2011, Defendants Bank of America, N.A., successor-by-merger to Countrywide Mortgage Ventures, LLC (erroneously sued as “Countrywide KB Home Loans, a Countrywide Mortgage Ventures, LLC”) (“Countrywide”), and successor-by-merger to BAC Home Loans Servicing, LP (erroneously sued as “BAC Home Loan Servicing, LP”) (“BAC”); ReconTrust Company, N.A. (“ReconTrust”); and Mortgage Electronic Registration

1 Systems, Inc. (“MERS”) (collectively “Moving Defendants”) filed a Motion to Dismiss all twenty-  
2 nine claims pursuant to Federal Rule of Civil Procedure 12(b)(6) as barred by the doctrine of *res  
3 judicata* and for failure to state a claim upon which relief can be granted, *see* ECF No. 6, which  
4 Moving Defendants re-noticed on October 7, 2011, after this case was reassigned to the  
5 undersigned, *see* ECF No. 18. Defendant Citibank, N.A. (“Citibank”) filed a Notice of Joinder in  
6 Moving Defendants’ Motion to Dismiss. Pursuant to Civil Local Rule 7-3(a), Plaintiffs’ opposition  
7 to the motion to dismiss was due on October 21, 2011. As of today, December 9, 2011, Plaintiffs  
8 have not filed an opposition or statement of nonopposition to Defendants’ motion to dismiss. The  
9 Court hereby VACATES the December 15, 2011 hearing on Defendants’ Motion to Dismiss and  
10 initial case management conference.

11 Furthermore, the Court ORDERS Plaintiffs to show cause why this case should not be  
12 dismissed for failure to prosecute. This Order does not authorize Plaintiff to file an untimely  
13 opposition to Defendants’ motion to dismiss. Plaintiffs have until January 3, 2012 to file a  
14 response to this Order to Show Cause. A hearing on this Order to Show Cause is set for  
15 **Wednesday, January 11, 2012 at 2:00 P.M.** Plaintiffs’ failure to respond to this Order and to  
16 appear at the January 11, 2012 hearing will result in dismissal with prejudice for failure to  
17 prosecute.

18 In the event that Plaintiffs timely file a response to this Order, Defendant Citibank is on  
19 notice that the Court may at that time request supplemental briefing as to why Citibank’s joinder in  
20 Moving Defendants’ Motion to Dismiss is proper given that Citibank was not a party to the  
21 relevant prior action, contrary to Moving Defendants’ representation in footnote 1 of their Motion.

22 **IT IS SO ORDERED.**

23  
24 Dated: December 9, 2011  
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LUCY H. KOH  
United States District Judge