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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

FRANCISCO RIVERA,  
  
vs.  
  
WINDSOR CAPITAL MORTGAGE CORP.;  
GREENE APPRAISALS; KEVIN GREENE;  
BANK OF AMERICA, N.A.; ONE WEST  
BANK FSB; NDEX WEST, LLC; et al.,  
  
Defendant.

CASE NO. 10-CV-606 JLS

**ORDER: (1) GRANTING EX  
PARTE MOTION TO REOPEN  
CASE; (2) EXPUNGING LIS  
PENDENS**

(ECF No. 9)

Presently before the Court is Defendant Bank of America, N.A.’s unopposed ex parte motion to reopen case. (Mot. to Reopen, ECF No. 9.) Because of the relief Defendant requests, the Court treats Defendant’s motion as one to expunge Plaintiff’s lis pendens. For the reasons stated, Defendant’s motion is **GRANTED**.

**BACKGROUND**

On March 23, 2010, Plaintiff filed a complaint alleging nine federal- and state-law claims allegedly arising out of Plaintiff’s purchase and financing of real property located at 29527 Anthony Road, Valley Center, California. (*See generally* Compl. ¶¶ 16–81, ECF No. 1.) He filed a notice of lis pendens as to the property on the same day. (Lis Pendens, ECF No. 3.) As in many other cases, Plaintiff’s counsel, Kent C. Wilson, failed to serve the defendants, and the case was dismissed for failure to prosecute. (Judgment, ECF No. 9; *see Luna v. U.S. Bank, N.A.*, 2011 WL 1099795, at \*1

1 (S.D. Cal. Mar. 24, 2011) (noting that Wilson has filed more than 130 mortgage cases in this district  
2 since April 28, 2009, none of which has yet been successful); *Navarro v. Greenlight Fin. Servs.*, 2010  
3 WL 4117444, at \*1 (S.D. Cal. Oct. 19, 2010) (noting that Wilson is in the process of resigning his  
4 membership in the State Bar of California.) Several months later, Defendants filed the instant  
5 motion. (Mot. to Reopen.)

## 6 ANALYSIS

7 Federal courts look to state law in matters pertaining to lis pendens. *See* 28 U.S.C. § 1964.  
8 Under California Code of Civil Procedure section 405.20, “[a] party to an action who asserts a real  
9 property claim may record a notice of pendency of action in which that real property claim is alleged.”  
10 “The purpose of a lis pendens is to give ‘constructive notice that an action has been filed affecting title  
11 or right to possession of the real property described in the notice.’” *De Vega v. Suntrust Mortg., Inc.*,  
12 2011 WL 1336469, at \*1 (E.D. Cal. Apr. 7, 2011) (quoting *BGJ Assocs., LLC v. Superior Court*, 89  
13 Cal. Rptr. 2d 693, 702 (Cal. Ct. App. 1999)). “A lis pendens effectively prevents a sale or  
14 encumbrance of the property until the litigation is resolved or the lis pendens is expunged.” *Farias*  
15 *v. FCM Corp.*, 2010 WL 4806894, at \*4 (S.D. Cal. Nov. 18, 2010) (citing *Kirkeby v. Superior Court*,  
16 93 P.3d 395 (Cal. 2004)).

17 “At any time after notice of pendency of action has been recorded, any party . . . may apply  
18 to the court in which the action is pending to expunge the notice.” Cal. Civ. Proc. Code § 405.30. The  
19 court shall expunge the notice if (1) “the court finds that the pleading on which the notice is based  
20 does not contain a real property claim,” *id.* § 405.31; or (2) “the court finds that the claimant has not  
21 established by a preponderance of the evidence the probable validity of the real property claim,” *id.*  
22 § 405.32.

23 Here, as a result of Plaintiff’s failure to prosecute his claims—likely a consequence of  
24 counsel’s abandonment of his client—the Court dismissed Plaintiff’s claims. As such, Plaintiff is left  
25 without “a real property claim” and cannot establish the “probable validity” of such a claim in this  
26 case. Accordingly, Defendant’s motion to expunge the lis pendens is **GRANTED**.

## 27 CONCLUSION

28 For the reasons stated, Defendant’s motion to expunge lis pendens is **GRANTED**, and the lis

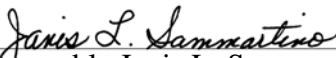
1 pendens as to the property located at 29527 Anthony Road, Valley Center, California, and recorded  
2 in the San Diego County Recorder's Office as Document Number 2010-0143569, is **HEREBY**  
3 **EXPUNGED** from the public record.

4 **IT IS SO ORDERED.**

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6 DATED: June 24, 2011

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Honorable Janis L. Sammartino  
United States District Judge

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