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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

RICARDO MACEDO,  
  
Plaintiff,  
  
v.  
  
COUNTRYWIDE HOME LOANS,  
INC.,  
  
Defendant.

CASE No. 13-CV-3068 W (BGS)

**ORDER GRANTING  
DEFENDANT’S EX PARTE  
APPLICATION FOR  
JUDGMENT OF DISMISSAL  
[DOC. 13] AND DENYING  
PLAINTIFF’S MOTION  
[DOC. 12]**

Pending before the Court is Defendants’ ex parte application for entry of a judgment of dismissal pursuant to Federal Rule of Civil Procedure 41 (b). Also pending is Plaintiff’s motion for entry of an order of dismissal without prejudice, which the Court construes as an opposition to Defendants’ application.

Rule 41 (b) provides that “[i]f the plaintiff fails . . . to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) . . . operates as an adjudication on the merits.”

On April 17, 2014, this Court issued an order granting Defendants’ motion to dismiss the complaint. (See Doc. No. 9.) However, the order granted Plaintiffs leave to amend the complaint until May 8, 2014.

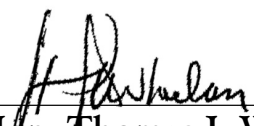
1 To date Plaintiff has not filed an amended complaint, nor has he filed a motion  
2 or ex parte application requesting additional time in which to do so. Instead, Plaintiff  
3 filed the motion requesting that the case be dismissed without prejudice. The basis for  
4 Plaintiff's request is that the case settled. (See Mt. [Doc. 12], 2:17-18.) Plaintiff's  
5 contention appears false.

6 According to Defendants' reply, the case did not settle. (See *Second Schoor Dec.*  
7 [Doc. 14], ¶¶ 4-5.) Instead, Plaintiff filed the motion seeking dismissal without  
8 prejudice after Defendants provided notice that they would be filing the ex parte  
9 application. (See *Schoor Dec.* [Doc. 13-1], ¶ 2, Ex. A.) The Court, therefore, construes  
10 Plaintiff's failure to amend the complaint or seek additional time in which to do so, as  
11 a concession to his inability to state a claim against Defendants.

12 For these reasons, the Court **GRANTS** Defendants' ex parte application  
13 [Doc. 13], **DENIES** Plaintiff's motion [Doc. 12], and **ORDERS** this matter  
14 **DISMISSED WITH PREJUDICE** and **JUDGMENT** shall be entered in favor of  
15 Defendants.<sup>1</sup>

16  
17 **IT IS SO ORDERED.**

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19 **DATED: July 10, 2014**

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22 \_\_\_\_\_  
23 Hon. Thomas J. Whelan  
24 United States District Judge

25  
26 \_\_\_\_\_  
27 <sup>1</sup> Plaintiff and his attorney are reminded that under Rule 11, by presenting a motion to  
28 the court, they are certifying "to the best of the person's knowledge, information, and belief,  
formed after an inquiry reasonable under the circumstances," that the factual contentions have  
evidentiary support. Fed. R. Civ. P. 11(b)(3). Violation of Rule 11 may result in sanctions.