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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SERGIO GUERRERO VILLEGAS,  
Plaintiff,  
v.

Civil No. 15cv0637 JAH(DHB)

**ORDER GRANTING DEFENDANT  
MOTION TO DISMISS [Doc. # 5]**

WELLS FARGO HOME MORTGAGE,  
A DIVISION OF WELLS FARGO;  
TICOR TITLE COMPANY OF  
CALIFORNIA, NBS DEFAULT  
SERVICES, LLC; AND DOES 1  
THROUGH 10, INCLUSIVE,  
Defendants.

**INTRODUCTION**

Pending before the Court is the motion to dismiss [Doc. #5] filed by Defendant Wells Fargo Bank, N.A., successor by merger to Wells Fargo Bank Southwest, N.A., f/k/a Wachovia Mortgage, FSB f/k/a World Savings Bank, FSB (“Defendant”). After a careful review of the parties’ submissions, and for the reasons set forth below, this Court GRANTS Defendant’s motion to dismiss.

**BACKGROUND**

**1. Factual Background**

The instant complaint, filed by Sergio Guerrero Villegas (“Plaintiff”), stems from a secured loan made by World Savings Bank, FSB to third party Maria Guadalupe Valenzuela to finance her purchase of a home located at 511 Montera Court, Chula Vista,

1 California 91910. Maria Guadalupe Valenzuela transferred all rights to title and interest  
2 in the property to Plaintiff, who eventually defaulted on the loan. As a result of Plaintiff's  
3 default, Defendant initiated foreclosure proceedings by recording a Notice of Default on  
4 September 23, 2014. On February 6, 2015 a Notice of Trustee's Sale was recorded.

5 **2. Procedural Background**

6 On February 19, 2015, Plaintiff commenced this action in the San Diego County  
7 Superior Court. The case was removed to this Court on March 20, 2015. *See* Doc. #1.  
8 Defendant filed the instant motion to dismiss on March 26, 2015. *See* Doc. #3. Plaintiff  
9 filed an opposition to Defendant's motion to dismiss on April 28, 2015. *See* Doc. #4.  
10 Defendant filed a reply on May 4, 2015. Doc. #5. This Court subsequently took the  
11 motion under submission without oral argument. *See* CivLR 7.1(d.1).

12 **DISCUSSION**

13 Defendant moves to dismiss on the grounds that the complaint fails to state a claim  
14 upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6).  
15 Instead of opposing the merits of Defendant's motion to dismiss, Plaintiff contends in  
16 opposition that this Court lacks subject matter jurisdiction, which this Court construes as  
17 a motion to remand.

18 **1. Motion to Remand**

19 **a. Legal Standard**

20 The Federal Court is one of limited jurisdiction. *See* Gould v. Mutual Life Ins. Co.  
21 v. New York, 790 F.2d 769, 774 (9th Cir. 1986). As such, it cannot reach the merits of  
22 any dispute until it confirms it's own subject matter jurisdiction. Steel Co. v. Citizens for  
23 a Better Environ., 118 S.Ct. 1003, 1012 (1998). District courts must construe the removal  
24 statutes strictly against removal and resolve any uncertainty as to removability in favor of  
25 remanding the case to state court. Boggs v. Lewis, 863 F.2d 662, 663 (9<sup>th</sup> Cir. 1988) .  
26 Removal jurisdiction is governed by 28 U.S.C § 1441 et seq. A state court action can only  
27 be removed if it could have originally been brought in federal court. Caterpillar, Inc. V.  
28 Williams, 482 U.S. 386, 392 (1987).

1 Here, Plaintiff's complaint was removed on diversity grounds. To establish diversity  
2 jurisdiction, there must be: (1) complete diversity among opposing parties; and (2) an  
3 amount in controversy exceeding \$75,000. *See* 28 U.S.C. § 1332(a). The burden is on the  
4 party invoking the federal removal statute to demonstrate federal subject matter  
5 jurisdiction over the case. *See* Emrich v. Touche Ross & Co., 846 F.2d 1190, 1195 (9<sup>th</sup> Cir.  
6 1988)

7 **b. Analysis**

8 Plaintiff contends that this Court lacks subject matter jurisdiction over his claims  
9 because “1) There is No Complete Diversity such that this Court can exercise diversity  
10 jurisdiction, since co-Defendant TICOR TITLE COMPANY OF CALIFORNIA and NBS  
11 DEFAULT SERVICES, LLC are California residents, and 2) There is NO Federal Question  
12 and the Amount in Controversy DOES NOT exceed \$75,00.00.” Doc. # 4 at 2 (emphasis  
13 in original). However, Plaintiff provides no argument or evidence supporting his  
14 contention, nor does he rebut Defendant's attestations presented in the Notice of Removal  
15 filed in support of jurisdiction. *See* Doc. #1 at 2.<sup>1</sup> Based on the record, this Court finds  
16 Defendant has met its burden of demonstrating that subject matter jurisdiction exists, and  
17 Plaintiff has failed to rebut that showing. Thus, the Court is now faced with an unopposed  
18 motion to dismiss.

19 **2. Motion to Dismiss**

20 **a. Legal Standard**

21 The Ninth Circuit has held that a district court may properly grant a motion to  
22 dismiss as unopposed pursuant to a local rule where the local rule permits, but does not  
23 require the granting of a motion for failure to respond. *See generally, Ghazali v. Moran*,  
24 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995) (*per curiam*) (affirming dismissal for failure to timely file  
25 opposition papers). The Southern District of California's Civil Local Rule 7.1(f.3.c)  
26 expressly provides that “[i]f an opposing party fails to file the papers in the manner  
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28 <sup>1</sup> The only case cited by Plaintiff in support of his jurisdictional arguments is not  
analogous to the instant case. *See* Doc. # 4 at 2 n.1 (citing Althie v. Wells Fargo civil case  
No.3:15-cv-00417-CAB-BGS.)

1 required by Local Rule 7.1(e.2), that failure may constitute a consent to the granting of  
2 that motion or other request for ruling by the court.” Prior to dismissal of an unopposed  
3 motion, the court must weigh the following factors: “(1) the public’s interest in expeditious  
4 resolution of litigation; (2) the court’s need to manage it’s docket; (3) the risk of prejudice  
5 to the Defendants; (4) the public policy favoring disposition of cases on their merits; and  
6 (5) the availability of less drastic sanctions.” Ghazali, 46 F.3d at 53 (quoting Henderson  
7 v. Duncan, 779 F.2d 1421, 1423 (9<sup>th</sup> Cir. 1986)). The Ninth Circuit has recognized that  
8 the first and fourth factors cut in opposite directions. *See* Yourish v. California Amplifier,  
9 1991 F.3d 983, 990 (9<sup>th</sup> Cir. 1999) (first factor always weighs in favor of dismissal);  
10 Hernandez v. City of El Monte, 138 F.3d 393, 401 (9<sup>th</sup> Cir. 1998) (fourth factor counsels  
11 against dismissal). Thus, this Court will address the second, third and fifth factors in  
12 determining whether it should grant Defendant’s unopposed motion.

13 **b. Analysis**

14 After a review of the record, this Court finds that the second factor weighs in favor  
15 of dismissal. As the court noted in Yourish, the routine noncompliance of litigants should  
16 not prevent the court from managing its docket. Yourish, 191 F. 3d 990. Plaintiff has  
17 failed to comply with one of the most basic requirements of litigation, and to date has  
18 offered no excuse for failing to respond to Defendant’s motion to dismiss. The fact that  
19 Plaintiff has yet to make any attempt to address the motion to dismiss also supports a  
20 finding of prejudice towards Plaintiff, and weighs in favor of dismissal. Finally, with  
21 respect to whether less drastic measures have been considered, in the interest of lessening  
22 the sanction imposed on Plaintiff, the Court will grant Defendant’s motion to dismiss  
23 without prejudice.

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CONCLUSION AND ORDER

Based on the foregoing, IT IS HEREBY ORDERED that Defendant Wells Fargo Bank, N.A.,’s motion to dismiss is **GRANTED** and the instant complaint is **DISMISSED WITHOUT PREJUDICE**.

Dated: July 30, 2015



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JOHN A. HOUSTON  
United States District Judge