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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 CINTHIA F. MARSHALL,
12 Plaintiff,
13 v.
14 OCWEN LOAN SERVICING, LLC,
15 Defendant.

Case No.: 17cv1818-LAB (JMA)

**ORDER TO SHOW CAUSE RE:
DISMISSAL AND LEAVE TO
AMEND; AND**

ORDER OF REFERRAL

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18 Defendant Ocwen Loan Servicing, LLC filed a motion for judgment on the
19 pleadings, with a hearing date of October 22. (Docket no. 23.) When Plaintiff
20 Cinthia Marshall, who is represented by counsel, failed to oppose it, the Court
21 issued an order to show cause (Docket no. 26) why the motion should not be
22 granted. The order required her to file her written opposition to the motion. If she
23 did not, the order cautioned her that the Court would construe it as her consent to
24 the motion's being granted, citing Civil Local Rule 7.1(f)(3)(c).

25 Marshall filed no opposition, and did not respond in any way to the Court's
26 order. Failure to follow the Court's local rules, and disobedience to the Court's
27 orders are both proper grounds for dismissal, as well as other sanctions. See
28 *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); Civil Local Rule 83.1.

1 Although Ocwen has been participating actively in the case, Marshall has
2 not. The last time she showed any indication of doing so was April 19, 2018, when
3 her counsel appeared at a case management conference. (See Docket no. 18.)
4 Besides failing to oppose the motion to dismiss, she also failed to oppose Ocwen's
5 motion for resolution of a discovery dispute, even after being ordered to do so by
6 Magistrate Judge Jan Adler.¹ That motion alleged that she was failing to participate
7 in the discovery process. In fact, the only indication she is participating in this
8 action at all is her attorney's electronic signature on a joint motion authored by
9 Ocwen. Marshall's disobedience to Civil Local Rule 7.1(f)(3)(c) as well as to the
10 Court's own order to show cause has caused needless delay and has imposed
11 unfair burdens and expenses on Ocwen. The motion to dismiss (Docket no. 23)
12 is **GRANTED IN PART**. The complaint is **DISMISSED WITHOUT PREJUDICE**.

13 Marshall is **ORDERED TO SHOW CAUSE** why this action should not be
14 dismissed for failure to prosecute. She is also **ORDERED TO SHOW CAUSE** why
15 she should not be sanctioned for disobedience to Civil Local Rule 7.1(f)(3)(c) and
16 for disobedience to the Court's earlier order to show cause. She may do so by filing
17 a memorandum of points and authorities, not longer than seven pages, by **January**
18 **16, 2019**, without fail. The motion must show good cause for her failure to oppose
19 Ocwen's motions. If Marshall fails to show cause for her failure to prosecute, this
20 action will be dismissed without prejudice. If she seeks to avoid dismissal but fails
21 to show good cause for her failure to oppose Ocwen's motion to dismiss, the Court
22 may impose sanctions for her violation of Civil Local Rule 7.1(f)(3)(c) and for her
23 disobedience to the Court's order. See Civil Local Rule 83.1(a).

24 In addition, if Marshall believes she can successfully amend to correct the
25 defects pointed out in Defendant's motion, she should seek leave to do so by filing
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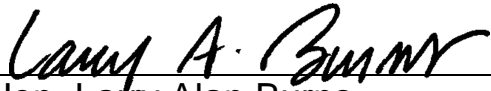
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28 ¹ Judge Adler was at the time the assigned Magistrate Judge. Since then, the
case has been reassigned to Magistrate Judge Linda Lopez.

1 a motion for leave to amend, attaching her proposed amended complaint as an
2 exhibit. Her motion must explain why her proposed amended complaint is not
3 subject to dismissal for each of the reasons set forth in Defendant's motion. In
4 particular, she must explain why she is not estopped from advancing her claims
5 for failing to disclose them in her bankruptcy. She must explain why she has a
6 RESPA or TILA claim against Ocwen, as a servicer of the loan. And she must show
7 why she has standing to pursue a claim under Cal. Bus. & Prof. Code §17204. Any
8 motion for leave to amend must be filed by **January 28, 2019**. Defendant's
9 opposition will be due **February 11, 2019**. No reply briefs are to be filed without
10 leave. If appropriate, a hearing will be set, but otherwise the matter will be deemed
11 submitted on the papers after Defendant files its opposition. If Marshall fails to
12 seek leave to amend as ordered, this action will be dismissed for failure to
13 prosecute.

14 Although this order has discussed other motions, it is intended to address
15 only Ocwen's pending motion to dismiss (Docket no. 23), the Court's own order to
16 show cause (Docket no. 26), and Marshall's general failure to prosecute. The
17 pending motion for determination of the discovery dispute (Docket no. 24) and the
18 joint motion to modify the scheduling order (Docket no. 32), and all associated
19 matters remain referred to Magistrate Judge Linda Lopez.

20 **IT IS SO ORDERED.**

21 Dated: January 7, 2019

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24 Hon. Larry Alan Burns
25 United States District Judge
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