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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CAROLYN S. WILSON,

Plaintiff,

No. CIV-10-0171 GEB EFB PS

vs.

WESTERN PROGRESSIVE, LLC;  
OCWEN LOAN SERVICING, LLC;  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.;  
HSBC BANK NEVADA N.A.,

Defendants.

ORDER AND  
FINDINGS AND RECOMMENDATIONS

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This case, in which plaintiff is proceeding *pro se*, is before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21). *See* 28 U.S.C. § 636(b)(1). On January 22, 2010, defendants Ocwen Loan Servicing, LLC, Mortgage Electronic Registration Systems, Inc., and HSBC Bank USA, N.A. (“defendants”) removed the action to this court from Sacramento County Superior Court. On February 1, 2010, defendants moved to dismiss plaintiff’s complaint, and noticed the motion for hearing on March 3, 2010. Dckt. Nos. 1, 9. Plaintiff failed to file either an opposition or a statement of non-opposition to the motion and on February 22, 2010, the court continued the hearing on defendants’ motion to April 7, 2010 and ordered plaintiff to show cause, in writing, no later than March 17, 2010, why sanctions should not be

1 imposed for her failure to timely file an opposition or a statement of non-opposition. The order  
2 directed plaintiff to file either an opposition or a statement of non-opposition no later than March  
3 17, 2010. Dckt. No. 11. The order further stated that “[f]ailure of plaintiff to file an opposition  
4 will be deemed a statement of non-opposition to the pending motion, and may result in a  
5 recommendation that this action be dismissed for lack of prosecution. *See* Fed. R. Civ. P.  
6 41(b).” *Id.*

7 On March 17, 2010, plaintiff filed a response to the order to show cause, stating that her  
8 papers were not filed in a timely manner because plaintiff “was in an auto accident which totaled  
9 [her] car and left [her] banged, bruised, and broken.” Dckt. No. 12. Plaintiff further stated that  
10 she was sorry for the inconvenience and would do her best in the future to have her paperwork in  
11 on time.

12 As a result of plaintiff’s March 17, 2010 filing, the February 22, 2010 order to show  
13 cause was discharged. Order filed March 24, 2010, Dckt. No. 13. However, plaintiff still had  
14 not filed an opposition or a statement of non-opposition to the pending motion. Accordingly, the  
15 hearing on the motion to dismiss was “continued one more time to give plaintiff an opportunity  
16 to respond to the motion.” *Id.* Plaintiff was again admonished that a failure to timely file an  
17 opposition would be deemed a statement of non-opposition to the pending motion, and may  
18 result in a recommendation that defendants’ motion be granted and/or that this action be  
19 dismissed for lack of prosecution. *Id.* Plaintiff was directed to file an opposition or a statement  
20 of non-opposition no later than April 21, 2010. *Id.*

21 The deadline has now passed and the court docket reflects that plaintiff still has not filed  
22 an opposition or statement of non-opposition to defendants’ motion. In light of plaintiff’s  
23 repeated failures to comply with the local rules and court orders in spite of prior warnings,  
24 dismissal for failure to prosecute is warranted. *See* Fed. R. Civ. P. 41(b); L.R. 110.

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1 Accordingly, IT IS HEREBY ORDERED that:

2 1. The hearing date of May 12, 2010 on defendants' motion to dismiss, Dckt. No. 9, is  
3 vacated; and

4 2. The status (pretrial scheduling) conference currently set for hearing on May 26, 2010,  
5 is vacated.<sup>1</sup>

6 IT IS FURTHER RECOMMENDED that:

7 1. This action be dismissed pursuant to Federal Rule of Civil Procedure 41(b), based on  
8 plaintiff's failure to prosecute the action;

9 2. Defendants' motion to dismiss, Dckt. No. 9, be denied as moot; and

10 3. The Clerk of Court be directed to close this case.

11 These findings and recommendations are submitted to the United States District Judge  
12 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
13 after being served with these findings and recommendations, any party may file written  
14 objections with the court and serve a copy on all parties. Such a document should be captioned  
15 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections  
16 within the specified time may waive the right to appeal the District Court's order. *Turner v.*  
17 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

18 DATED: May 4, 2010.

19   
20 EDMUND F. BRENNAN  
21 UNITED STATES MAGISTRATE JUDGE  
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25 <sup>1</sup> As a result, the parties are not required to submit status reports as provided in the January  
26 22, 2010 order. *See* Dckt. No. 4 at 2. However, if the recommendation of dismissal herein is not  
adopted by the district judge, the undersigned will reschedule the status conference and require the  
parties to submit status reports.