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8   IN THE UNITED STATES DISTRICT COURT

9   FOR THE EASTERN DISTRICT OF CALIFORNIA

10   IVAN ROTARU,
      RAISA ROTARU,

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                 Plaintiffs,   No. CIV S-10-3036 WBS EFB PS
12
          vs.
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      PNC MORTGAGE; CAL-WESTERN
14   RECONVEYANCE; NATIONAL
      CITY MORTGAGE,
15   ORDER AND
                 Defendants.   FINDINGS AND RECOMMENDATIONS
16   _____/

17   This case, in which plaintiffs are proceeding *pro se*, is before the undersigned pursuant to

18   Eastern District of California Local Rule 302(c)(21). *See* 28 U.S.C. § 636(b)(1). On November

19   10, 2010, defendant PNC Bank, National Association, as successor by merger to National City

20   Bank, previously dba National City Mortgage (named as "PNC Mortgage" and "National City

21   Mortgage") ("PNC") removed this action from Sacramento County Superior Court pursuant to

22   28 U.S.C. §§ 1331, 1441, and 1446, on the ground that plaintiffs' complaint alleges federal

23   claims. Dckt. No. 1. Then, on November 17, 2010, PNC moved to dismiss and to strike the

24   complaint and noticed the motions to be heard on December 29, 2010. Dckt. Nos. 12, 13.

25   On December 22, 2010, because plaintiffs had not filed either an opposition or a

26   statement of non-opposition to the motions, the undersigned continued the hearing on the

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motions to February 16, 2011; ordered plaintiffs to show cause, in writing, no later than February

2, 2011, why sanctions should not be imposed for failure to timely file an opposition or a

statement of non-opposition to the pending motions; and directed plaintiffs to file an opposition

to the motions, or a statement of non-opposition thereto, no later than February 2, 2011. Dckt.

No. 16. The undersigned further stated that "[f]ailure of plaintiffs to file an opposition will be

deemed a statement of non-opposition to the pending motions, and may result in a

recommendation that this action be dismissed for lack of prosecution. *See* Fed. R. Civ. P.

41(b)." *Id.*

Although the deadlines have now passed, the court docket reflects that plaintiffs have not

filed a response to the order to show cause, an opposition to the motions, or a statement of non-

opposition to the motions. In light of plaintiffs' failures, the undersigned will recommend that

this action be dismissed for failure to prosecute the action and to comply with court orders and

Local Rules and that PNC's motions to dismiss and to strike be denied as moot. *See* Fed. R. Civ.

P. 41(b); L.R. 110.

Accordingly, IT IS HEREBY ORDERED that:

1. The hearing date of February 16, 2011 on PNC's motions to dismiss and to strike,

Dckt. Nos. 12 and 13, is vacated; and

2. The status (pretrial scheduling) conference currently set for hearing on March 30,

2011, is vacated.[1]

IT IS FURTHER RECOMMENDED that:

1. This action be dismissed pursuant to Federal Rule of Civil Procedure 41(b), based on

plaintiffs' failure to prosecute the action and to comply with court orders and Local Rules;

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[1] As a result, the parties are not required to submit status reports as provided in the
November 18, 2010 order. *See* Dckt. No. 14. 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.

1   2. PNC's motions to dismiss and to strike, Dckt. Nos. 12 and 13, be denied as moot; and

2   3. The Clerk be directed to close this case.

3   These findings and recommendations are submitted to the United States District Judge

4   assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen days

5   after being served with these findings and recommendations, any party may file written

6   objections with the court and serve a copy on all parties. Such a document should be captioned

7   "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections

8   within the specified time may waive the right to appeal the District Court's order. *Turner v.*

9   *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

10   DATED: February 7, 2011.

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12   EDMUND F. BRENNAN
     UNITED STATES MAGISTRATE JUDGE

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