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

MICHAEL MCARDLE,

Plaintiff,

No. CIV S-11-0814 LKK EFB (TEMP) PS

vs.

POWER DEFAULT SERVICES, et al.

Defendants.

ORDER AND
FINDINGS AND RECOMMENDATIONS

_____ /

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 March 31, 2011, defendant Power Default Services, Mortgage Electronic Registration Systems, Inc., U.S. Bank N.A. and American Home Mortgage Servicing, Inc. filed a motion to dismiss and re-noticed the motion for hearing before the undersigned on May 25, 2011. Dckt. Nos. 7, 11. On April 1, 2011, defendant Fidelity National Title Co. filed a motion to dismiss and also re-noticed the motion for hearing on May 25, 2011. Dckt. Nos. 9, 12.

On May 15, 2011, because plaintiff had not filed either an opposition or a statement of non-opposition to the motions, the undersigned continued the hearing on the motion to June 22, 2011; ordered plaintiff to show cause, in writing, no later than June 8, 2011, why sanctions should not be imposed for failure to timely file an opposition or a statement of non-opposition to

1 the pending motions; and directed plaintiff to file an opposition to the motions, or a statement of
2 non-opposition thereto, no later than June 8, 2011. Dckt. No. 17. The undersigned further stated
3 that “[f]ailure of plaintiff to file an opposition will be deemed a statement of non-opposition to
4 the pending motions, and may result in a recommendation that this action be dismissed for lack
5 of prosecution. *See* Fed. R. Civ. P. 41(b).” *Id.*

6 Although the deadlines have now passed, the court docket reflects that plaintiff has not
7 filed a response to the order to show cause, an opposition to the motions, or a statement of non-
8 opposition to the motions. In light of plaintiff’s failures, the undersigned will recommend that
9 this action be dismissed for failure to prosecute the action and for failure to comply with court
10 orders and Local Rules, and that defendants’ motions to dismiss be denied as moot. *See* Fed. R.
11 Civ. P. 41(b); L.R. 110.

12 Accordingly, IT IS HEREBY ORDERED that:

13 1. The hearing date of June 22, 2011 on defendants’ motions to dismiss, Dckt. Nos. 7
14 and 9, is vacated; and

15 2. The status (pretrial scheduling) conference currently set for hearing on August 24,
16 2011, is vacated.¹

17 IT IS FURTHER RECOMMENDED that:

18 1. This action be dismissed pursuant to Federal Rule of Civil Procedure 41(b), based on
19 plaintiff’s failure to prosecute the action and to comply with court orders and Local Rules;

20 2. The motions to dismiss, Dckt. Nos. 7 and 9, be denied as moot; and

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

22 These findings and recommendations are submitted to the United States District Judge
23 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days

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25 ¹ As a result, the parties are not required to submit status reports as provided in the April
26 7, 2011 order. *See* Dckt. Nos. 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 after being served with these findings and recommendations, any party may file written
2 objections with the court and serve a copy on all parties. Such a document should be captioned
3 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
4 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
5 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

6 DATED: June 13, 2011.

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8 EDMUND F. BRENNAN
9 UNITED STATES MAGISTRATE JUDGE
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