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

THOMAS AUGUSTINE,

Plaintiff,

CIV. NO. S-11-1834 JAM CKD PS

vs.

JP MORGAN CHASE BANK, N.A., 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 August 16, 2011, defendants filed a motion to dismiss. The motion was noticed to be heard on September 21, 2011.

On September 7, 2011, because plaintiff had not filed either an opposition or a statement of non-opposition to the motion, but requested an extension of time to file opposition, the undersigned continued the hearing on the motion to dismiss and directed plaintiff to file an opposition to the motion, or a statement of non-opposition thereto, no later than October 12, 2011. Plaintiff was advised that failure to file an opposition would be deemed a statement of non-opposition to the pending motion and would result in a recommendation that this action be dismissed.

1 Although the deadline for filing opposition has now passed, the court docket
2 reflects that plaintiff has not filed an opposition to the motion or a statement of non-opposition to
3 the motion. In light of plaintiff's failure to file opposition, the undersigned will recommend that
4 this action be dismissed for failure to prosecute the action and for failure to comply with court
5 orders and Local Rules, and that defendants' motion to dismiss be denied as moot. See Fed. R.
6 Civ. P. 41(b); L.R. 110.

7 Accordingly, IT IS HEREBY ORDERED that:

8 1. The hearing date of November 2, 2011 on defendants' motion to dismiss is
9 vacated; and

10 IT IS HEREBY RECOMMENDED that:

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

14 2. Defendants' motion to dismiss (dkt. no. 8) be denied as moot; and

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

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

23 Dated: October 13, 2011

24 
25 CAROLYN K. DELANEY
26 UNITED STATES MAGISTRATE JUDGE