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

CELSO COSTELO;  
MARIA S. COLMENARES-PRATT,

No. 2:12-cv-1429-JAM-EFB PS

Plaintiffs,

vs.

PRO 30 FUNDING , et al.,

FINDINGS AND RECOMMENDATIONS

Defendants.

\_\_\_\_\_ /  
This case is before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21). *See* 28 U.S.C. § 636(b)(1). On May 29, 2012, plaintiffs filed a complaint in this action and paid the filing fee. Dckt. No. 1. The same day, the court issued its initial scheduling order. Dckt. No. 3. That order directed plaintiffs to complete service of process within 120 days (*see* Federal Rule of Civil Procedure (“Rule”) 4(m)), and set a scheduling conference for October 10, 2012. *Id.* The order further directed the parties to file status reports no later than fourteen days prior to the October 10, 2012 scheduling conference (or by September 26, 2012), and cautioned the parties that failure to obey the federal or local rules or orders of the court could result in sanctions, including a recommendation that the case be dismissed. *Id.*

Because the court file revealed that plaintiffs had not filed a status report, as required by the May 29, 2012 order, and had not yet effected service of process on defendants, on September

1 28, 2012, the undersigned continued the status conference and ordered plaintiffs to show cause,  
2 on or before November 7, 2012, why this case should not be dismissed for failure to follow this  
3 court's orders and Local Rules and/or for failure to effect service of process within the time  
4 prescribed by Rule 4(m). Dckt. No. 4 (citing Fed. R. Civ. P. 4(m); Fed. R. Civ. P. 4(l)(1)  
5 (requiring that proof of service be made to the court); E.D. Cal. L.R. 210(b) (same); E.D. Cal.  
6 L.R. 110 ("Failure of counsel or of a party to comply with these Rules or with any order of the  
7 Court may be grounds for imposition by the Court of any and all sanctions authorized by statute  
8 or Rule or within the inherent power of the Court."); E.D. Cal. L.R. 183 ("Any individual  
9 representing himself or herself without an attorney is bound by the Federal Rules of Civil or  
10 Criminal Procedure and by these Local Rules."); *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir.  
11 1995) ("Failure to follow a district court's local rules is a proper ground for dismissal.")).  
12 Plaintiffs were also given until November 7, 2012 to file a proof of timely service on defendants,  
13 or to show cause, in writing, why any unserved defendants should not be dismissed for failure to  
14 effect service of process within the time prescribed by Rule 4(m), and to file status reports (or a  
15 joint status report) setting forth the matters referenced in the court's May 29, 2012 order,  
16 including the status of service of process. *Id.* at 2. The order provided that "[f]ailure of  
17 plaintiffs to comply with this order may result in a recommendation that this action be dismissed  
18 for failure to follow court orders and this court's Local Rules, for failure to effect service of  
19 process within the time prescribed by Rule 4(m), and/or for lack of prosecution under Rule  
20 41(b)." *Id.* at 3.

21 Although the deadline has passed, plaintiffs have not filed a response to the order to show  
22 cause, have not filed a status report, and have not demonstrated that they have properly served  
23 any of the defendants.<sup>1</sup> Therefore, the undersigned will recommend that this case be dismissed  
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25 <sup>1</sup> The only document plaintiffs have filed in this case since the order to show cause was  
26 issued was a statement on October 1, 2012 that they decline to consent to the assignment of this case  
to the magistrate judge for trial and disposition, and request reassignment to a district judge. Dckt.

1 for failure to prosecute and for failure to comply with court orders, the Federal Rules of Civil  
2 Procedure, and this court's Local Rules. *See* Fed. R. Civ. P. 41(b); L.R. 110.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. The status (pretrial scheduling) conference currently set for hearing on November 28,  
5 2012, is vacated;<sup>2</sup>

6 2. The September 28, 2012 order to show cause is discharged; and

7 3. Plaintiffs' request for reassignment of this action to a district judge, Dckt. No. 5, is  
8 denied as unnecessary.

9 IT IS FURTHER RECOMMENDED that:

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

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

14 These findings and recommendations are submitted to the United States District Judge  
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
16 after being served with these findings and recommendations, any party may file written  
17 objections with the court and serve a copy on all parties. Such a document should be captioned  
18 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections

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23 No. 5. That request will be denied as unnecessary since this case is already assigned to a district  
24 judge. As explained in the consent form provided to plaintiffs, "[w]hether or not the parties consent  
25 pursuant to 28 U.S.C. § 636(c), the assigned Magistrate Judge will hear all motions except those  
26 case dispositive motions set forth in 28 U.S.C. § 636(b)(1)(A)." Dckt. No. 3-1.

<sup>2</sup> 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 within the specified time may waive the right to appeal the District Court's order. *Turner v.*  
2 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: November 14, 2012.

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5 EDMUND F. BRENNAN  
6 UNITED STATES MAGISTRATE JUDGE  
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