UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

HERBERT MILLER,

Plaintiff,

v.

JPMORGAN CHASE BANK, N.A., U.S. BANK, N.A. as Trustee for LSF 9 MASTER PARTICIPATION TRUST, MTC FINANCIAL, INC. d/b/a/ TRUSTEE CORPORATION,

Defendant.

No. 2:16-cv-1593-JAM-EFB PS

ORDER AND FINDINGS AND RECOMMENDATIONS

On July 15, 2016, defendant JPMorgan Chase Bank filed a motion to dismiss this action pursuant to Federal Rule of Civil Procedure 12(b)(5) and 12(b)(6), and noticed the motion for hearing on August 17, 2016. ECF No. 6. Plaintiff failed to timely file an opposition or statement of non-opposition to the motion. Accordingly, the hearing was continued to October 5, 2016, and plaintiff was ordered, by no later than September 21, 2016, to file an opposition or statement of non-opposition to the motion and to show cause why sanctions should not be imposed for his failure to timely file an opposition or statement of non-opposition. ECF No. 12. Plaintiff was also admonished that failure to file an opposition would be deemed a statement of non-opposition to the granting of defendant's motion, and could result in a recommendation that this action be dismissed for lack of prosecution and/or failure to comply with court orders and the court's local rules. *Id.*

The deadline has passed and plaintiff has not filed an opposition or statement of non-opposition to the pending motion, nor has he responded to the court's order to show cause.

Accordingly, it is hereby ORDERED that the hearing on defendant's motion to dismiss, currently set for October 5, 2016, is VACATED. Defense counsel's request to appear telephonically (ECF No. 13) is denied as moot.

Further, it is RECOMMENDED that this action be dismissed for failure to prosecute and to comply with court orders and the court's local rules. *See* Fed. R. Civ. P. 41(b); Cal. E.D. L.R. 110.

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

DATED: October 3, 2016.

EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE