IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ALYSON BENJAMIN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. 2:14-CV-575-WKW
	)	
BANK OF AMERICA, N.A.,	)	
et al.,	)	
	)	
Defendants.	)	

ORDER

On April 7, 2015, the Magistrate Judge entered a Report and Recommendation (Doc. # 19) in this case, in which he recommended that Plaintiff Alyson Benjamin's claims be dismissed without prejudice in light of her failure to prosecute. Ms. Benjamin has not objected to the Magistrate Judge's Recommendation. Defendant Green Tree Servicing, LLC, did object, however, and is requesting that this court either dismiss Ms. Benjamin's case with prejudice or issue an order precluding her from re-filing her case in state court. The court has conducted an independent and *de novo* review of those portions of the Recommendation to which objection is made. *See* 28 U.S.C. § 636(b).

While Defendant Green Tree's objection is noted, it is due to be overruled. As the Eleventh Circuit has repeatedly explained, "[d]ismissal of a case with prejudice is considered a sanction of last resort, applicable only in extreme

circumstances." *Goforth v. Owens*, 766 F.2d 1533, 1535 (11th Cir. 1985). The record shows that Ms. Benjamin instituted this action with the benefit of counsel and only began proceeding *pro se* when her counsel withdrew in light of the development of an "irreconcilable conflict of interest." (Docs. # 14, 15.) Because Ms. Benjamin's failure to prosecute immediately followed the withdrawal of her counsel, this court finds dismissal with prejudice an inappropriate sanction.

Accordingly, it is ORDERED as follows:

1. Defendant Green Tree Servicing, LLC's Objection (Doc. # 20) is OVERRULED.

2. The Recommendation (Doc. # 19) is ADOPTED.

3. Plaintiff Alyson Benjamin's claims are DISMISSED without prejudice due to her failure to prosecute this action and comply with orders of this court.

A separate final judgment will be entered.

DONE this 7th day of May, 2015.

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/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE

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