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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

David Zandonatti,  
Plaintiff,

vs.

Colorado Federal Savings Bank; EMC)  
Mortgage Corporation; Quality Loan  
Service Corp., et al.  
Defendants.

No. CV 10-441-TUC-RCC

**ORDER**

On November 23, 2010, the Honorable Judge Glenda E. Edmonds, United States Magistrate Judge, filed a Report and Recommendation (Recommendation) in this matter. (Doc. 21). The Recommendation advised the Court to grant the Defendant’s Motion to Dismiss (Doc. 4) and Motion for a Summary Ruling (Doc. 14) pursuant to LRCiv. 7.2(i), because Plaintiff failed to respond to either motion. Plaintiff filed objections to the Recommendation on December 10, 2010. (Doc. 22).

Plaintiff argues that under the test in Ghazali, summary dismissal of this case would be an abuse of discretion because the fourth and fifth factors weigh against dismissal. The fourth factor - public policy favoring adjudication on the merits - always weighs against dismissal, and Plaintiff’s discussion of the merits of his case does not change the final analysis.

1 As to the fifth factor, Plaintiff argues that less drastic sanctions are available, because  
2 his failure to respond was the result of ignorance and nothing more. However, the only  
3 explanation Plaintiff offers for his failure to respond to either motion is that he did not know  
4 that he had an obligation to respond. (Doc. 22, p. 4). However, if he was not aware  
5 previously, Defendant's Motion for a Summary Ruling certainly put him on notice of his  
6 obligation. While pro se litigants are entitled to a certain amount of leniency in the  
7 construction of their pleadings, they must still follow the rules of procedure. Ghazali v.  
8 Moran, 46 F.3d 52, 54 (9th Cir. 1995). The fifth factor still favors dismissal.

9 The Court considers the Recommendation (Doc. 21) to be thorough and well-  
10 reasoned. After a thorough and de novo review of the record, including Plaintiff's  
11 objections, the Court will ADOPT the Recommendation of Magistrate Judge Edmonds.  
12 Therefore

13 **IT IS HEREBY ORDERED** that the Court adopts Magistrate Judge Edmonds's  
14 Report and Recommendation (Doc. 21).

15 **IT IS FURTHER ORDERED** granting Defendant's Motion to Dismiss (Doc. 4) and  
16 Defendant's Motion for Summary Ruling (Doc. 14).

17 **IT IS FURTHER ORDERED** that the Plaintiff's complaint is dismissed with  
18 prejudice. The Clerk of Court shall enter judgment accordingly.

19 DATED this 14th day of December, 2010.

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23 **Raner C. Collins**  
24 **United States District Judge**