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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

ERIC B. BATTLES,  
Plaintiff,  
vs.  
JP MORGAN CHASE BANK, et al.,  
Defendants.

No. CIV 11-778-TUC-CKJ

**ORDER**

On May 25, 2012, Magistrate Judge Bernardo P. Velasco issued a Report and Recommendation (Doc. 15) in which he recommended the action be dismissed without prejudice for failure to prosecute. Battles has filed an Objection.

Pending before the Court is the Motion for Emergency Stay of Foreclosure (Doc. 16) filed by Plaintiff Eric B. Battles (“Battles”).

On February 24, 2012, this Court screened Battles’s Amended Complaint and found that a claim for a RESPA violation had been stated against JP Morgan Chase Bank. The Court stated:

Battles, therefore, may arrange for service of the Complaint upon JP Morgan Chase Bank in compliance with Fed.R.Civ.P. 4. Alternatively, Battles may choose to submit a Second Amended Complaint to include, for example, additional defendants or claims for relief. Any such Second Amended Complaint would be subject to screening by the Court.

February 24, 2012, Order, p. 4. Additionally, the Court ordered:

3. Battles SHALL HAVE thirty (30) days from the date of filing of this Order to file a Second Amended Complaint. All causes of action alleged in the original complaint which are not alleged in any amended complaint will be waived. Any

1 Second Amended Complaint filed by Battles must be retyped or rewritten in its  
2 entirety and may not incorporate any part of the original or amended complaints by  
3 reference. Any Second Amended Complaint submitted by Battles shall be clearly  
4 designated as an amended complaint on the face of the document;

5 \* \* \* \* \*

6 5. A defendant may be dismissed from this action, pursuant to Fed.R.Civ.P.  
7 4(m) if Battles does not either obtain a **waiver of service of the summons or**  
8 **complete service of the Summons and the Third [sic] Amended Complaint** on a  
9 defendant within 120 days of the filing of the Complaint or within 60 days of the  
10 filing of this Order, whichever is later. See Fed. R. Civ. P. 4(m).

11 *Id.* at 5. Battles did not submit a Second Amended Complaint and, on April 16, 2012, this  
12 matter was referred to the Hon. Bernardo P. Velasco for all pretrial proceedings and report  
13 and recommendation in accordance with the provisions of 28 U. S. C. § 636(b)(1) and  
14 L.R.Civ.P. 72.1 and 72.2.

15 On April 2, 2012, Magistrate Judge Velasco ordered Battles to show cause why “this  
16 case should not be **DISMISSED WITHOUT PREJUDICE**, for failure to serve the  
17 Defendants pursuant to Rule 4(m), Fed.R.Civ.P., by filing a writing with this Court on or  
18 before May 22, 2012.” May 2, 2012, Order, p. 2. The magistrate judge also ordered that  
19 the case would “be dismissed, should Plaintiff fail to timely comply with [the] Order.” *Id.*

20 Battles did not submit any filings on or before May 22, 2012. On May 25, 2012, the  
21 magistrate judge issued a Report and Recommendation in which he recommended this action  
22 be dismissed without prejudice pursuant to Fed.R.Civ.P. 41(b) for failure to prosecute.  
23 Battles was advised that, “[p]ursuant to 28 U.S.C. §636(b), any party may serve and file  
24 written objections within 10 days after being served with a copy of this Report and  
25 Recommendation. If objections are not timely filed they may be deemed waived.” May 25,  
26 2012, Order, p. 4.<sup>1</sup> On May 30, 2012, this Court extended the deadline for filing an  
27 objection to the Report and Recommendation. On June 1, 2012, Battles filed an Objection  
28 to the Report and Recommendation.

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<sup>1</sup>28 U.S.C. § 636 has been amended to provide a party with 14 days after being served  
with a copy an opportunity to serve and file written objections to a Report and  
Recommendation.

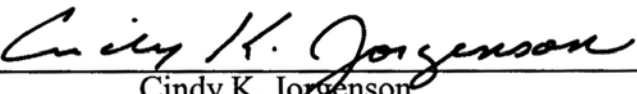
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Battles' Objection makes no effort to remedy the service deficiency as discussed in the Report and Recommendation. Indeed, Battles states that he did not understand that he was required to notify Defendant of the pending suit; however, rather than attempting to complete service or request an extension of time in which to complete service, Battles requests a hearing on his Complaint and the pending matters. The Court agrees with the magistrate judge that dismissal without prejudice for failing to prosecute is appropriate.

Accordingly, IT IS ORDERED:

- 1. The Report and Recommendation (Doc. 15) is ADOPTED.
- 2. This action is DISMISSED WITHOUT PREJUDICE for failure to prosecute.
- 3. All pending motions are DISMISSED AS MOOT.
- 4. The Clerk of the Court shall enter judgment and shall then close its file in this matter.

DATED this 15th day of August, 2012.

  
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Cindy K. Jorgenson  
United States District Judge