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5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF CALIFORNIA**
7

8 **GLENN W. BEVER,**

9 **Plaintiff**

10 **v.**

11 **CAL-WESTERN RECONVEYANCE**
12 **CORP., et al.,**

13 **Defendants**

CASE NO. 1:11-CV-1584 AWI SKO

ORDER ON PLAINTIFF'S
OBJECTIONS TO THE DECEMBER 6,
2013 SCHEDULING ORDER

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15 On December 5, 2013, a scheduling conference was held in which Plaintiff and counsel for
16 Defendant Citimortgage telephonically appeared. See Doc. No. 86. On December 6, 2013,
17 Magistrate Judge Oberto issued a scheduling order. See Doc. No. 87. This document was mailed
18 to Plaintiff at the address provided. See id. In pertinent part, the scheduling order set a deadline
19 of February 7, 2014, for motions or stipulations to file amended pleadings. See id.

20 On February 7, 2014, Plaintiff filed a motion to amend his complaint.¹ See Doc. No. 91.

21 On February 11, 2014, Plaintiff filed a declination to proceed before the Magistrate Judge
22 and objections to the December 6 scheduling order. See Doc. No. 96. In his objections, Plaintiff
23 states that his objections are timely under Rule of Civil Procedure 72 because he has not been
24 served with the scheduling order, Plaintiff did not receive a copy of the scheduling order until
25 February 5, 2014 because he has been out of the country and that left him with only 2 days to file

26
27 ¹ A minute order dated February 12, 2014, ordered Plaintiff to properly notice this motion pursuant to Local Rule
28 230(b). Plaintiff has yet to comply with the minute order. If Plaintiff has not received available dates and times for
proper notice as provided by Local Rule 230(b), he shall contact the Clerk in order to obtain dates so that he may re-
notice his motion. If Plaintiff does not comply with the minute order and re-notice his motion in accordance with
Local Rule 230(b) by 1:00 p.m. on February 21, 2014, Plaintiff's motion will be stricken.

1 a motion to amend (which is inadequate notice), and the scheduling order was improperly signed
2 by a Magistrate Judge because the scheduling order is not among the powers and duties listed by
3 28 U.S.C. § 636 and the undersigned did not assign or designate Magistrate Judge Oberto to issue
4 the scheduling order. See id.

5 Plaintiff's objections are overruled.

6 First, pursuant to Rule 5(b)(2)(C), Plaintiff was served with the scheduling order on
7 December 6 when it was mailed that day to Plaintiff at the address he has provided to the Court.
8 Plaintiff's absence from the country does not change the fact or effect of service.² Further,
9 although Plaintiff claims that he has not received sufficient notice with respect to the February 7,
10 2014 deadline, he was nevertheless able to file a motion to amend that included a proposed
11 amended complaint.

12 Second, and relatedly, orders by the Magistrate Judges are final if no motion for
13 reconsideration is filed within 14 days of service of the order. See Local Rule 303(b). As stated
14 above, Plaintiff was served with the scheduling order on December 6. The February 11, 2014
15 objections are not timely. Thus, the scheduling order is final and the objections are improper.

16 Third, Magistrate Judge Oberto has been designated to issue scheduling orders. Local
17 Rule 302(c)(13) provides that Magistrate Judges in Fresno are to perform "all pre-trial scheduling
18 conferences" This entails issuance of a scheduling order. The scheduling order issued by
19 Magistrate Judge Oberto is consistent with the practice of the Fresno Division of the Eastern
20 District of California, and is what occurs in every civil case that is filed in this division. Plaintiff
21 need not consent to the Magistrate Judge performing this function, and a declination is irrelevant
22 to that function. The consent identified by Plaintiff is consent for the Magistrate Judge to perform
23 all further functions in a case, including trial. See Local Rule 305. Because Plaintiff has declined
24 to proceed before a Magistrate Judge, Magistrate Judge Oberto will not be conducting trial.
25 However, Magistrate Judge Oberto will be performing the functions that are typically associated
26 with a civil non-consent case and any matters that the Court refers to Magistrate Judge Oberto.

27 ² The Court notes that Plaintiff attended the scheduling conference and thus, should have known that a scheduling
28 order would be issued. Plaintiff does not explain when he was out of the country or what efforts he made to keep
himself informed of the happenings in his case while away.

ORDER

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's objections (Doc. No. 96) are overruled; and
2. As discussed in Footnote 1, Plaintiff is to take the necessary steps to comply with Local Rule 230(b) and shall re-notice his motion to amend no later than 1:00 p.m. on February 21, 2014.

IT IS SO ORDERED.

Dated: February 13, 2014



SENIOR DISTRICT JUDGE