

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER BROWN,

Plaintiff,

No. CIV S-09-1594 FCD EFB PS

vs.

JP MORGAN CHASE BANK, N.A., AS  
TRUSTEE FOR CERTIFICATEHOLDERS  
OF BEAR STEARNS ASSET BACKED  
SEC CHRISTOPHER BROWN; LOAN  
CENTER OF CALIFORNIA, INC.; EMC  
MORTGAGE CORPORATION;  
MORTGAGE LENDERS FINANCIAL  
NETWORK, INC.; and DOES 1 through  
50, inclusive,

Defendants.

ORDER AND  
FINDINGS AND RECOMMENDATIONS

This case, in which plaintiff is proceeding *pro se*, is before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21). See 28 U.S.C. § 636(b)(1); Dckt. No. 12. On June 8, 2009, defendants JP Morgan Chase Bank and EMC Mortgage Corporation (“defendants”) removed this action from Yolo County Superior Court based on federal question jurisdiction. Dckt. No. 1. On July 23, 2009, plaintiff filed a first amended complaint, and on October 1, 2009, defendants filed a motion to dismiss that amended complaint. Dckt. Nos. 7, 13.

///

1           Because plaintiff failed to file an opposition to the motion to dismiss, on December 7,  
2 2009, the undersigned continued the hearing on the motion to dismiss to January 27, 2010;  
3 directed plaintiff to show cause, in writing, no later than January 13, 2010, why sanctions should  
4 not be imposed for failure to timely file an opposition or a statement of non-opposition to the  
5 pending motion; and directed plaintiff to file an opposition to the motion, or a statement of non-  
6 opposition thereto, no later than January 13, 2010. Dckt. No. 15. The order further stated that  
7 “[f]ailure of plaintiff to file an opposition will be deemed a statement of non-opposition to the  
8 pending motion, and may result in a recommendation that this action be dismissed for lack of  
9 prosecution. *See* Fed. R. Civ. P. 41(b).”

10           The deadline to respond has passed and the court docket reflects that plaintiff has not  
11 responded to the order to show cause nor filed an opposition or statement of non-opposition to  
12 defendants’ motion. In light of plaintiff’s failures, the undersigned will recommend that this  
13 action be dismissed for failure to prosecute and that defendants’ motion to dismiss be denied as  
14 moot. *See* Fed. R. Civ. P. 41(b); L.R. 110.

15           Accordingly, IT IS HEREBY ORDERED that the hearing date of January 27, 2010 on  
16 defendants’ motion to dismiss, Dckt. No. 13, is vacated.


17           It is FURTHER RECOMMENDED that:

- 18           1. This action be dismissed pursuant to Federal Rule of Civil Procedure 41(b), based on  
19 plaintiff’s failure to prosecute the action;  
20           2. Defendants’ motion to dismiss, Dckt. No. 13, be denied as moot; and  
21           3. The Clerk of Court be directed to close this case.

22           These findings and recommendations are submitted to the United States District Judge  
23 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
24 after being served with these findings and recommendations, any party may file written  
25 objections with the court and serve a copy on all parties. Such a document should be captioned  
26 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections

1 within the specified time may waive the right to appeal the District Court's order. *Turner v.*  
2 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: January 20, 2010.

4   
5 EDMUND F. BRENNAN  
6 UNITED STATES MAGISTRATE JUDGE  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26