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

HERBERT MILLER,

Plaintiff,

No. CIV S-09-1599 LKK KJM PS

vs.

MORTGAGE ELECTRONIC SYSTEMS, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

Defendants' motions to dismiss are pending before the court. At the hearing on this matter, plaintiff informed the court that he had filed a petition for bankruptcy. Review of the bankruptcy docket indicates plaintiff filed a petition for bankruptcy on September 17, 2009. See Bankruptcy Court, E. D. Cal., case no. 09-39991, docket no. 1. Although it appears plaintiff has failed to list his claims against the present defendants as an asset (see id., docket no. 30, schedule B, no. 21), plaintiff is no longer the "real party in interest" for the prosecution of the instant lawsuit. See Cobb v. Aurora Loan Services, 408 B.R. 351 (E. D. Cal. 2009).

Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within

1 twenty days after being served with these findings and recommendations, any party may file
2 written objections with the court and serve a copy on all parties. Such a document should be
3 captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the
4 objections shall be served and filed within ten days after service of the objections. The parties
5 are advised that failure to file objections within the specified time may waive the right to appeal
6 the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

7 DATED: December 14, 2009.

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11 U.S. MAGISTRATE JUDGE
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