

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

PETER PAIZ,

Plaintiff,

No. CIV S-09-2185 GEB EFB PS

vs.

JP MORGAN CHASE BANK, N.A.;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS (MERS);
FEDERAL SAVINGS BANK; and
AMTRUST BANK,

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). On June 10, 2009, defendant JP Morgan Chase Bank removed this action from Sacramento County Superior Court to the Northern District of California based on federal question jurisdiction, and on August 7, 2009, the action was transferred to this district from the Northern District of California. Dckt. Nos. 1, 15. On October 2, 2009, defendant JP Morgan Chase Bank filed a motion to dismiss plaintiff's complaint, and defendant AmTrust Bank joined in the motion. Dckt. Nos. 24, 31.

Because plaintiff failed to file a response to defendants' motion to dismiss, on November 20, 2009, the court continued the hearing on the motion to January 13, 2010; ordered plaintiff to

1 show cause, in writing, no later than December 28, 2009, why sanctions should not be imposed
2 for failure to timely file a response to the motion; and directed plaintiff to file an opposition or a
3 statement of non-opposition to the motion no later than December 28, 2009. Dckt. No. 34. The
4 order further provided that “[f]ailure of plaintiff to file an opposition will be deemed a statement
5 of non-opposition to the pending motion, and may result in a recommendation that this action be
6 dismissed for lack of prosecution. *See* Fed. R. Civ. P. 41(b).” *Id.* at 3.

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

12 Accordingly, IT IS HEREBY ORDERED that:

13 1. The hearing date of January 13, 2010 on defendants’ motion to dismiss, Dckt. No. 24,
14 is vacated; and

15 2. The status (pretrial scheduling) conference currently set for hearing on February 24,
16 2010, is vacated.¹

17 Further, it is 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. 24, 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
25 ¹ As a result, the parties are not required to submit status reports as provided in the
26 August 7, 2009 order. *See* Dckt. No. 18 at 2. However, if the recommendation of dismissal
herein is not adopted by the district judge, the undersigned will reschedule the status conference
and require the parties to submit status reports.

1 after being served with these findings and recommendations, any party may file written
2 objections with the court and serve a copy on all parties. Such a document should be captioned
3 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
4 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
5 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

6 DATED: January 5, 2010.

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