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

VLADIMIR KHUDOY;
LYUDMILA KHUDOY;

No. CIV S-09-2630 MCE EFB PS

Plaintiffs,

vs.

WASHINGTON MUTUAL BANK FA;
CALIFORNIA RECONVEYANCE
COMPANY, and Does 1-250,

ORDER AND
FINDINGS AND RECOMMENDATIONS

Defendants.

_____ /
This case, in which plaintiffs are 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 September 18, 2009, defendants removed this action from Sacramento County Superior Court based on federal question jurisdiction. Dckt. No. 1. On October 14, 2009, defendants filed a motion to dismiss plaintiffs' complaint, and noticed the motion for hearing on November 18, 2009. Dckt. No. 12.

Because plaintiffs failed to file a response to defendants' motion to dismiss, on November 10, 2009, the court continued the November 18 hearing to January 6, 2010; ordered plaintiffs to show cause, in writing, no later than December 9, 2009, why sanctions should not be imposed on them for their failure to timely file a response to defendants' motion; and directed

1 plaintiffs to file an opposition to the motion, or a statement of non-opposition thereto, no later
2 than December 9, 2009. Dckt. No. 15. The order further provided that “[f]ailure of plaintiffs to
3 file an opposition will be deemed a statement of non-opposition to the pending motion, and may
4 result in a recommendation that this action be dismissed for lack of prosecution. *See* Fed. R.
5 Civ. P. 41(b).” *Id.* at 2.

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

11 Accordingly, IT IS HEREBY ORDERED that:

12 1. The hearing date of January 6, 2010 on defendants’ motion to dismiss, Dckt. No. 12,
13 is vacated; and

14 2. The status (pretrial scheduling) conference currently set for hearing on January 20,
15 2010, is vacated.¹

16 It is FURTHER RECOMMENDED that:

17 1. This action be dismissed pursuant to Federal Rule of Civil Procedure 41(b), based on
18 plaintiffs’ failure to prosecute the action;

19 2. Defendants’ motion to dismiss, Dckt. No. 12, be denied as moot; and

20 3. The Clerk of Court be directed to close this case.

21 These findings and recommendations are submitted to the United States District Judge
22 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
23 after being served with these findings and recommendations, any party may file written

24 ¹ As a result, the parties are not required to submit status reports as provided in the
25 September 21, 2009 order. *See* Dckt. No. 3 at 2. However, if the recommendation of dismissal
26 herein is not adopted by the district judge, the undersigned will reschedule the status conference
and require the parties to submit status reports.

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

5 DATED: December 15, 2009.

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7 EDMUND F. BRENNAN
8 UNITED STATES MAGISTRATE JUDGE
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