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

REYNALDO T. AMODO,  
Plaintiff,

No. CIV S-10-0177 MCE DAD PS

v.

HOMEQ SERVICING  
CORPORATION, et al.,  
Defendants.

FINDINGS & RECOMMENDATIONS

\_\_\_\_\_ /  
This matter came before the court on May 21, 2010 at 11:00 a.m. for a Status (Pretrial Scheduling) Conference. Plaintiff did not file a status report on or before May 7, 2010, as required by the court’s order setting the status conference, and no appearance was made by or on behalf of plaintiff at the status conference. No defendant has appeared in the action, and no return of service has been filed.

Plaintiff filed a pro se complaint and paid the required filing fee on January 22, 2010. Plaintiff also filed an ex parte motion for order to show cause and temporary restraining order. Due to the unavailability of the assigned district judge, the case was temporarily reassigned to District Judge Lawrence K. Karlton for consideration of the motion for injunctive relief. By order filed January 22, 2010, Judge Karlton denied the motion on the ground that plaintiff is unable to obtain injunctive relief for the alleged violations of federal law.

1 In the order setting this case for a status conference, plaintiff was advised that  
2 Federal Rule of Civil Procedure 4(m) “provides that an action may be dismissed against any  
3 defendant on whom service of process has not been completed within 120 days from the date the  
4 complaint was filed.” (Order filed Jan. 29, 2010 (Doc. No. 7.), at 2 (emphasis omitted).) When  
5 the case came before the court for the status conference on May 21, 2010, only one day remained  
6 of the 120-day period. The 120-day period has now expired, and plaintiff has not requested an  
7 extension of time or shown good cause for an extension of time.<sup>1</sup> The undersigned will therefore  
8 recommend that the action be dismissed without prejudice pursuant to Federal Rule of Civil  
9 Procedure 4(m) for failure to file evidence of service of process upon any defendant within 120  
10 days after plaintiff’s complaint was filed.

11 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed  
12 without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

13 These findings and recommendations will be submitted to the United States  
14 District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Any  
15 objections to these findings and recommendations must be in submitted in writing and must be  
16 filed within fourteen (14) days after these findings and recommendations are filed. A document  
17 containing objections should be titled “Objections to Magistrate Judge’s Findings and  
18 Recommendations.” Failure to file objections within the specified time may waive the right to  
19 appeal the District Court’s order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

20 DATED: May 25, 2010.

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24 DALE A. DROZD  
25 UNITED STATES MAGISTRATE JUDGE

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26 <sup>1</sup> As noted above, plaintiff did not appear at the status conference.