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

YOLANDA A. MOJARRO,

Plaintiff,

No. CIV S-10-1439 MCE EFB PS

vs.

JPMORGAN CHASE BANK, N.A.;
CALIFORNIA RECONVEYANCE
COMPANY; LONG BEACH
MORTGAGE COMPANY;
DOES 1 through 1000,

ORDER AND
FINDINGS AND RECOMMENDATIONS

Defendants.

_____ /
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, 2010, defendants removed the action to this court from Sacramento County Superior Court on the ground that plaintiff’s complaint alleges federal claims, and on June 21, 2010, moved to dismiss plaintiff’s complaint. Dckt. Nos. 2, 9. Defendants noticed the motion for hearing on August 4, 2010. Dckt. No. 9. On July 27, 2010, because plaintiff had not filed either an opposition or a statement of non-opposition to the motion, the court continued the hearing on defendants’ motion to dismiss to September 22, 2010; ordered plaintiff to show cause, in writing, no later than September 8, 2010, why sanctions should not be imposed for her failure to timely

1 file an opposition or a statement of non-opposition to the pending motion; and directed plaintiff
2 to file an opposition to the motion, or a statement of non-opposition thereto, no later than
3 September 8, 2010. Dckt. No. 11. The court further stated that “[f]ailure of plaintiff to file an
4 opposition will be deemed a statement of non-opposition to the pending motion, and may result
5 in a recommendation that this action be dismissed for lack of prosecution. *See* Fed. R. Civ. P.
6 41(b).” *Id.*

7 Although the deadlines have now passed, the court docket reflects that plaintiff has not
8 filed a response to the order to show cause, an opposition to defendants’ motion, or a statement
9 of non-opposition to the motion. In light of plaintiff’s failures, the undersigned recommends that
10 this action be dismissed for failure to prosecute and that defendants’ motion to dismiss be denied
11 as moot. *See* Fed. R. Civ. P. 41(b); L.R. 110.

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. The hearing date of September 22, 2010 on defendants’ motion to dismiss, Dckt. No.
14 9, is vacated; and
15 2. The status (pretrial scheduling) conference currently set for hearing on October 20,
16 2010, is vacated.¹

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. 9, be denied as moot; and
21 3. The Clerk 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 ¹ As a result, the parties are not required to submit status reports as provided in the June 11,
25 2010 order. *See* Dckt. No. 4 at 2. However, if the recommendation of dismissal herein is not
26 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: September 21, 2010.

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8 EDMUND F. BRENNAN
9 UNITED STATES MAGISTRATE JUDGE
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