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

PAUL YANT,

Plaintiff,

No. CIV S-10-1756 MCE EFB PS

vs.

WELLS FARGO BANK, N.A.;
WELLS FARGO HOME MORTGAGE;
FIRST AMERICAN LOANSTAR
TRUSTEE SERVICES, LLC,

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 July 8, 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 July 15, 2010, moved to dismiss plaintiff's complaint. Dckt. Nos. 1, 9, 12. Defendants noticed the motions to be heard on August 25, 2010. Dckt. Nos. 9, 12. On August 13, 2010, because plaintiff had not filed either an opposition or a statement of non-opposition to the motions, the undersigned continued the hearing on defendants' motions to dismiss to October 6, 2010; ordered plaintiff to show cause, in writing, no later than September 22, 2010, why sanctions should not be imposed for his failure to timely file an opposition or a statement of non-opposition to the pending motions; and

1 directed plaintiff to file an opposition to the motions, or a statement of non-opposition thereto,
2 no later than September 22, 2010. Dckt. No. 14. The undersigned further stated that “[f]ailure
3 of plaintiff to file an opposition will be deemed a statement of non-opposition to the pending
4 motion, and may result in a recommendation that this action be dismissed for lack of
5 prosecution. *See* Fed. R. Civ. P. 41(b).” *Id.*

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

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. The hearing date of October 6, 2010 on defendants’ motions to dismiss, Dckt. Nos. 9
13 and 12, is vacated; and
14 2. The status (pretrial scheduling) conference currently set for hearing on November 17,
15 2010, is vacated.¹

16 Further, IT IS FURTHER RECOMMENDED that:

- 17 1. This action be dismissed pursuant to Federal Rule of Civil Procedure 41(b), based on
18 plaintiff’s failure to prosecute the action;
19 2. Defendants’ motions to dismiss, Dckt. Nos. 9 and 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 July 12,
25 2010 order. *See* Dckt. No. 5 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 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: October 1, 2010.

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7 EDMUND F. BRENNAN
8 UNITED STATES MAGISTRATE JUDGE
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