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

GEORGE A. BROWN,

Plaintiff,

No. CIV S-10-1762 LKK EFB PS

vs.

BANK OF AMERICA, N.A.,

Defendant.

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, defendant removed the action to this court from Placer 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, 8. Defendant noticed the motion to be heard on August 18, 2010. Dckt. No. 8. On August 10, 2010, because plaintiff had not filed either an opposition or a statement of non-opposition to the motion, the undersigned continued the hearing on the motion 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 motion; and directed plaintiff to file an opposition to the motion, or a statement of non-opposition thereto, no later than September 22, 2010. Dckt. No. 11. The

1 undersigned further stated that “[f]ailure of plaintiff to file an opposition will be deemed a  
2 statement of non-opposition to the pending motion, and may result in a recommendation that this  
3 action be dismissed for lack of prosecution. *See* Fed. R. Civ. P. 41(b).” *Id.*

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

9 Accordingly, IT IS HEREBY ORDERED that:

10 1. The hearing date of October 6, 2010 on defendant’s motion to dismiss, Dckt. No. 8, is  
11 vacated; and

12 2. The status (pretrial scheduling) conference currently set for hearing on November 17,  
13 2010, is vacated.<sup>1</sup>

14 IT IS FURTHER RECOMMENDED that:

15 1. This action be dismissed pursuant to Federal Rule of Civil Procedure 41(b), based on  
16 plaintiff’s failure to prosecute the action;

17 2. Defendant’s motion to dismiss, Dckt. No. 8, be denied as moot; and

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

19 These findings and recommendations are submitted to the United States District Judge  
20 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
21 after being served with these findings and recommendations, any party may file written  
22 objections with the court and serve a copy on all parties. Such a document should be captioned  
23 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections

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25 <sup>1</sup> As a result, the parties are not required to submit status reports as provided in the July 9,  
26 2010 order. *See* Dckt. No. 5 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 within the specified time may waive the right to appeal the District Court's order. *Turner v.*  
2 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: October 1, 2010.

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5 EDMUND F. BRENNAN  
6 UNITED STATES MAGISTRATE JUDGE  
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