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

PETER BESSONOV, TATYANA
BESSONOV,

Plaintiffs,

No. CIV S-10-1885 JAM EFB PS

vs.

WACHOVIA MORTGAGE; FIRST
HORIZON HOME LOAN; GOLDEN
WEST SAVINGS ASSOCIATION
SERVICE CO.; and NDEX WEST LLC,

Defendants.

ORDER AND
FINDINGS AND RECOMMENDATIONS

_____ /
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 July 16, 2010, defendants Wachovia Mortgage and Golden West Savings Association Service Co. (collectively, “Wachovia”) removed the action to this court from Placer County Superior Court on the ground that plaintiffs’ complaint alleges federal claims. Dckt. No. 1. Then, on August 5, 2010, Wachovia moved to dismiss and to strike plaintiff’s complaint. Dckt. Nos. 5, 7. The motions were noticed to be heard on October 27, 2010. *Id.*

On October 18, 2010, because plaintiffs had not filed either an opposition or a statement of non-opposition to the motions, the undersigned continued the hearing on the motions to

1 November 24, 2010; ordered plaintiffs to show cause, in writing, no later than November 10,
2 2010, why sanctions should not be imposed for his failure to timely file an opposition or a
3 statement of non-opposition to the pending motions; and directed plaintiffs to file an opposition
4 to the motions, or a statement of non-opposition thereto, no later than November 10, 2010. Dckt.
5 No. 8. The undersigned further stated that “[f]ailure of plaintiffs to file an opposition will be
6 deemed a statement of non-opposition to the pending motions, and may result in a
7 recommendation that this action be dismissed for lack of prosecution. *See* Fed. R. Civ. P.
8 41(b).” *Id.*

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

14 Accordingly, IT IS HEREBY ORDERED that:

15 1. The hearing date of November 24, 2010 on Wachovia’s motions to dismiss and to
16 strike, Dckt. Nos. 5 and 7, is vacated; and

17 2. The status (pretrial scheduling) conference currently set for hearing on December 22,
18 2010, is vacated.¹

19 IT IS FURTHER RECOMMENDED that:

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

22 2. Wachovia’s motions to dismiss and to strike, Dckt. Nos. 5 and 7, be denied as moot;
23 and

24
25 ¹ As a result, the parties are not required to submit status reports as provided in the July
26 19, 2010 and October 18, 2010 orders. *See* Dckt. Nos. 3, 8. 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.

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3. The Clerk be directed to close this case.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections within the specified time may waive the right to appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

DATED: November 15, 2010.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE