

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

MALIK REED,

Plaintiff,

No. CIV S-10-2133 GEB EFB PS

vs.

WELLS FARGO HOME MORTGAGE INC.;
FIRST AMERICAN LOANSTAR TRUSTEE
SERVICES; NEW CENTURY MORTGAGE
CORPORATION; and US BANK NATIONAL
ASSOCIATION,

Defendants.

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 February 8, 2011, the district judge adopted the undersigned’s recommendation that defendants First American Trustee Servicing Solutions, LLC, f/k/a First American Loanstar Trustee Services, LLC and Wells Fargo Home Mortgage, Inc.’s dismissal motions be granted, and dismissed plaintiff’s complaint without leave to amend as to those defendants. Dckt. No. 37.

Then, on March 9, 2011, because the docket revealed that the only remaining defendants, New Century Mortgage Corporation and U.S. Bank National Association, had not yet been properly served, the undersigned ordered plaintiff to show cause, on or before March 23, 2011, “why New Century Mortgage Corporation and/or U.S. Bank National Association should not be

1 dismissed, and as a result, this case be dismissed in its entirety, for failure to effect service of
2 process within the time prescribed by Rule 4(m).” Dckt. No. 38 at 2. The order to show cause
3 further provided that “[f]ailure of plaintiff to comply with this order may result in a
4 recommendation that New Century Mortgage Corporation, U.S. Bank National Association,
5 and/or this action be dismissed for failure to follow court orders, for failure to effect service of
6 process within the time prescribed by Rule 4(m), and/or for lack of prosecution under Rule
7 41(b).” *Id.* at 3.

8 Although the deadline has now passed, the court docket reflects that plaintiff has not filed
9 a response to the order to show cause and has not shown that service of process has been
10 properly effected on either New Century Mortgage Corporation or U.S. Bank National
11 Association. Although this action could also be dismissed under Rule 4(m), in light of plaintiff’s
12 failure to respond to the order to show cause, the undersigned will recommend that this action be
13 dismissed for failure to follow court orders and for lack of prosecution under Rule 41(b). *See*
14 *Fed. R. Civ. P. 41(b); L.R. 110.*

15 Accordingly, IT IS HEREBY RECOMMENDED that:

- 16 1. This action be dismissed pursuant to Federal Rule of Civil Procedure 41(b), based on
17 plaintiff’s failure to prosecute the action and to comply with court orders; and
18 2. The Clerk 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


24 ///

25 ///

26 ///

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: April 4, 2011.

4 
5 EDMUND F. BRENNAN
6 UNITED STATES MAGISTRATE JUDGE
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26