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

GERTRUDE V. VIZMANOS,

Plaintiff,

No. CIV S-10-2445 FCD EFB PS

vs.

BANK OF AMERICA; RECONTRUST  
COMPANY; US BANK NATIONAL  
ASSOCIATION; HARBORVIEW 2006-1  
TRUST; AMIR ENTERPRISES LLC;  
MELVIN STRONG; JUDY SCHILLING;  
HADI R. SAYID-ALI; ED TURNER; and  
DOES 1-100,

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).<sup>1</sup> See 28 U.S.C. § 636(b)(1). Defendants Bank of America, N.A., ReconTrust Company, N.A., and U.S. Bank National Association, as Trustee for Harborview 2006-1 Trust Fund, move to dismiss plaintiff’s complaint, Dckt. No. 5. On January 4, 2011, defendants noticed the motion to be heard on February 9, 2011. Dckt. No. 18.

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<sup>1</sup> Former plaintiff Teresa Moore was dismissed from this action on February 7, 2011. Dckt. Nos. 15, 16, 20.

1 On February 7, 2011, because plaintiff had not timely filed either an opposition or a  
2 statement of non-opposition to the motion, the undersigned continued the hearing on the motion  
3 to March 9, 2011; ordered plaintiff to show cause, in writing, no later than February 23, 2011,  
4 why sanctions should not be imposed for failure to timely file an opposition or a statement of  
5 non-opposition to the pending motion; and directed plaintiff to file an opposition to the motion,  
6 or a statement of non-opposition thereto, no later than February 23, 2011. Dckt. No. 21. The  
7 undersigned further stated that “[f]ailure of plaintiff to file an opposition will be deemed a  
8 statement of non-opposition to the pending motion, and may result in a recommendation that this  
9 action be dismissed for lack of prosecution. *See* Fed. R. Civ. P. 41(b).” *Id.*

10 Although the deadlines have now passed, the court docket reflects that plaintiff has not  
11 filed a response to the order to show cause, an opposition to the motion, or a statement of non-  
12 opposition to the motion. In light of plaintiff’s failures, the undersigned will recommend that  
13 this action be dismissed for failure to prosecute the action and to comply with the court’s orders  
14 and Local Rules. *See* Fed. R. Civ. P. 41(b); L.R. 110.

15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. The hearing date of March 9, 2011 on defendants’ motion to dismiss, Dckt. No. 5, is  
17 vacated; and  
18 2. The status (pretrial scheduling) conference currently set for hearing on April 13, 2011,  
19 is vacated.<sup>2</sup>

20 IT IS FURTHER RECOMMENDED that:

- 21 1. This action be dismissed pursuant to Federal Rule of Civil Procedure 41(b), based on  
22 plaintiff’s failure to prosecute the action and to comply with the court’s orders and Local Rules;

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25 <sup>2</sup> As a result, the parties are not required to submit status reports as provided in the  
26 September 13, 2010 order. *See* Dckt. No. 3. 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 2. Defendants' motion to dismiss, Dckt. No. 5, be denied as moot; and

2 3. The Clerk be directed to close this case.

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

10 DATED: March 1, 2011.

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12 EDMUND F. BRENNAN  
13 UNITED STATES MAGISTRATE JUDGE  
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