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

ARNEL FRANCISCO and
JANETH FRANCISCO,

Plaintiffs,

No. CIV S-10-2594 JAM DAD PS

v.

GREENPOINT MORTGAGE
FUNDING, INC.; OLD REPUBLIC
TITLE COMPANY; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.; LANDMARK
HOMES REALTY,

Defendants.

FINDINGS AND RECOMMENDATIONS

On December 7, 2010, plaintiffs, who are proceeding pro se in this matter, filed a notice of voluntary dismissal of defendants Old Republic Title Company and Landmark Homes Realty. By order filed December 15, 2010, the court honored plaintiffs' dismissal of the two specified defendants and denied the defendants' pending motions to dismiss as moot. By the same order, the court ordered as follows with regard to service of the two remaining defendants:

On or before January 25, 2011, plaintiffs shall file a return of service that shows service of a summons and complaint on defendants Greenpoint Mortgage Funding, Inc. and Mortgage Electronic Registration Systems, Inc. in a manner authorized by Federal Rule of Civil Procedure 4(h), or plaintiffs shall file a

1 declaration showing good cause for failing to effect proper service
2 on these defendants in a timely manner. See Fed. R. Civ. P. 4(m).

3 Order filed Dec. 15, 2010 (Doc. No. 15), at 2.

4 By order filed on November 22, 2010, the court had previously explained to
5 plaintiffs that the return of service filed on October 4, 2010 (Doc. No. 5) reflects that their
6 summons and complaint were served on defendants Greenpoint Mortgage Funding, Inc. and
7 Mortgage Electronic Registration Systems, Inc. by regular mail. See Order filed Nov. 22, 2010
8 (Doc. No. 13) at 2. Federal Rule of Civil Procedure 4 does not authorize service of a summons
9 and complaint by regular mail. Plaintiffs were cautioned that Rule 4(m) “provides that an action
10 may be dismissed against any defendant on whom service of process has not been completed
11 within 120 days from the date the complaint was filed.” Id.

12 The 120-day period after plaintiffs’ complaint was filed began to run on
13 September 25, 2010, and expired on January 25, 2011. Plaintiffs have not responded in any way
14 to the court’s December 15, 2010 order requiring them to file, on or before January 25, 2011, a
15 return of service that shows service of process on defendants Greenpoint Mortgage Funding, Inc.
16 and Mortgage Electronic Registration Systems, Inc. in a manner authorized by Federal Rule of
17 Civil Procedure 4(h) or, in the alternative, to file a declaration showing good cause for failing to
18 effect proper service on these two defendants in a timely manner.

19 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed
20 without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

21 These findings and recommendations will be submitted to the United States
22 District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
23 twenty-one (21) days after being served with these findings and recommendations, plaintiffs may
24 file written objections with the court. A document containing objections should be titled
25 “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiffs are advised that

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1 failure to file objections within the specified time may waive the right to appeal the District
2 Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: April 15, 2011.

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7 DALE A. DROZD
8 UNITED STATES MAGISTRATE JUDGE

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