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

FLOYD KNAPP,

Plaintiff,

CIV-S-10-2889 KJM GGH PS

vs.

JP MORGAN CHASE BANK, N.A., et al.,

Defendants.

ORDER

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In this case removed from state court, plaintiff claims wrongful foreclosure and  
sues to quiet title. In the last several months, plaintiff has been proceeding pro se. In June 2011,  
the court entered a preliminary injunction, restraining defendants from seeking to enforce an  
eviction order on the condition that plaintiff pay \$600 per month and file a statement with the  
court confirming timely payment. Plaintiff has filed the required statements each month since  
the preliminary injunction order was entered.

On September 30, 2011, the magistrate judge filed findings and recommendations  
recommending granting defendant's motion to dismiss in light of plaintiff's lack of prosecution  
in response to the motion. The findings and recommendations were served on the parties and  
contained notice that any objections to the findings and recommendations were to be filed within  
fourteen days. Plaintiff has filed objections. In accordance with the provisions of 28 U.S.C.

1 § 636(b)(1)(C) and Local Rule 304, this court has conducted a de novo review of this case.  
2 Having carefully reviewed the file, the court does not find fault with the substance of the  
3 findings and recommendations themselves. However, for the reasons set forth below the court  
4 declines to adopt the findings and recommendations.

5 Defendants filed their motion to dismiss on June 17, 2011. (ECF 29.) Plaintiff  
6 failed to appear at the hearing or otherwise oppose defendants' motion. As a result the magistrate  
7 judge recommended dismissing the action for plaintiff's failure to prosecute. *See* FED. R. CIV. P.  
8 41(b). Plaintiff timely objected that he never received notice of the motion and therefore was  
9 unable to oppose it. (ECF 37.) The magistrate judge then vacated his previously issued findings  
10 and recommendations and allowed plaintiff fourteen days to file an opposition. (ECF 39.) Again,  
11 plaintiff failed to respond. Again, the magistrate judge recommended the action be dismissed.  
12 (ECF 41.) And again, plaintiff filed a timely objection claiming he did not receive the order  
13 directing him to file an opposition. (ECF 42.) Although at one point, plaintiff had requested  
14 service of court orders and other documents by e-mail to avoid problems he described with his  
15 rural mail service, this request was not addressed or granted. (ECF 37.)

16 This court set the matter for a status conference to determine whether plaintiff  
17 would appear, providing notice of the status to plaintiff by e-mail. Plaintiff appeared at the  
18 status and represented that he intends to oppose defendants' motion and also voiced confusion  
19 over when his opposition should have been filed. Defendants were represented at the status by  
20 Thomas Van, who appeared telephonically and opposed providing plaintiff with any additional  
21 time to respond to the motion to dismiss.


22 In the interests of justice and in light of the court's strong preference to resolve  
23 cases on the merits, the court will allow plaintiff additional time to oppose defendant's motion to  
24 dismiss. Moreover, in the interests of having the motion decided on the merits in timely fashion,  
25 the court finds appointment of counsel for the limited purpose of opposing defendants' motion is  
26 warranted.

1 Accordingly, and good cause appearing, the court orders as follows:

- 2 1. Kresta N. Daly, Barth Tozer & Daly, Rea Building, 431 I Street, Suite 201,  
3 Sacramento, California 95814 is appointed to represent plaintiff for the limited  
4 purpose of opposing defendants' motion to dismiss;
- 5 2. Appointed counsel shall notify Sujean Park at 916-930-4278, or via email at  
6 spark@caed.uscourts.gov if she has any questions related to the appointment;
- 7 3. Defendants' motion to dismiss shall be heard by the undersigned;
- 8 4. Plaintiff shall file opposition briefing by April 30, 2012;
- 9 5. Defendants shall file a reply brief, if any, by May 7, 2012;
- 10 6. Hearing on defendants' motion is set for May 18, 2012, before the undersigned;
- 11 7. The Clerk of the Court is directed to serve a courtesy copy of this order on  
12 plaintiff at his email address, fhknapp@cwnet.com;
- 13 8. The court declines to adopt the September 30, 2011, findings and  
14 recommendations; and
- 15 9. Defendants' motion to adopt the findings and recommendations is denied as  
16 moot.

17 IT IS SO ORDERED.

18 DATED: April 16, 2012.

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21 UNITED STATES DISTRICT JUDGE  
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