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

LESLEY E. PHILLIPS,

Plaintiff,

No. CIV S-11-0089 JAM DAD PS

v.

WASHINGTON MUTUAL BANK FA,

Defendant.

FINDINGS AND RECOMMENDATIONS

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On January 10, 2011, plaintiff, proceeding pro se, filed a complaint and paid the required filing fee. The Clerk of the Court issued a summons as to defendant Washington Mutual Bank FA. On January 24, 2011, the court filed and served on plaintiff an order setting a status conference before the undersigned on May 20, 2011. When the status conference was held on May 20, 2011, no appearance was made by or on behalf of plaintiff or defendant.

By the January 24, 2011 order, plaintiff was cautioned that Federal Rule of Civil Procedure 4(m) “provides that a defendant must be dismissed if service of process is not accomplished on that defendant within 120 days from the date the complaint is filed.” (Order (Doc. No. 4) at 3.) Here, the 120-day period for service of process began to run on January 11, 2011, and expired on May 10, 2011. Plaintiff has not filed evidence that service of process was

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1 accomplished on the defendant by May 10, 2011, and the defendant has not appeared in this  
2 action.

3 Plaintiff failed to comply with the court's January 24, 2011 order in additional  
4 ways. Plaintiff did not file a certificate of service indicating the date and manner of service of  
5 the January 24, 2011 order upon defendant, and plaintiff did not file a status report on or before  
6 May 6, 2011. Plaintiff was advised that failure to file a timely status report or failure to appear at  
7 the status conference "may result in a recommendation that this case be dismissed for lack of  
8 prosecution and as a sanction for failure to comply with court orders and applicable rules." (Doc.  
9 No. 4 at 3.)

10 Accordingly, IT IS RECOMMENDED that this action be dismissed without  
11 prejudice for failure to effect service within the time specified in Rule 4(m) of the Federal Rules  
12 of Civil Procedure, for failure to comply with the requirements of the court's order filed January  
13 24, 2011, and for failure to prosecute this action in any manner.

14 These findings and recommendations will be submitted to the United States  
15 District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within  
16 fourteen (14) days after being served with these findings and recommendations, plaintiff may file  
17 written objections with the court. A document containing objections should be titled "Objections  
18 to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file  
19 objections within the specified time may waive the right to appeal the District Court's order. See  
20 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21 DATED: May 20, 2011.

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25 DALE A. DROZD  
26 UNITED STATES MAGISTRATE JUDGE

25 DAD:kw  
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