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

VALENTINA KOLODRIVSKIY,

Plaintiff,

CIV. NO. S-11-0371 GEB GGH PS

vs.

WACHOVIA BANK, MORTGAGE, et al.,

Defendants.

FINDINGS AND RECOMMENDATION

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This action was referred to the undersigned pursuant to Local Rule 302(c)(21). It was removed from state court on February 9, 2011. On July 11, 2011, defendant Wachovia Bank Mortgage was dismissed from the case. The only remaining defendant is ETS Services, LLC (“ETS”). On July 25, 2011, plaintiff was ordered to move for default against defaulting defendant ETS or the court would recommend that this defendant be dismissed. Plaintiff has not complied with that order.

Defendant ETS filed a “declaration of non-monetary status” pursuant to Cal. Civ. Code § 2924l, prior to the removal of this action from state court on diversity grounds. Section 2924l relieves a trustee from having to participate in an action where it is named as a defendant solely in its capacity as trustee and not because of any acts or omissions, as long as the

1 declaration is not disputed. District courts have acknowledged applicability of this state statute
2 without analysis. See Smith v. Bank of America, 2011 WL 1332035 (E.D. Cal. April 6, 2011);
3 Ortiz v. Indymac Bank, 2011 WL 2035791 (C.D. Cal. May 20, 2010); Carnero v. EMC Mortgage
4 Corp., 2010 WL 4916418 (N.D. Cal. Nov. 22, 2010); Carnero v. Washington Mutual, 2010 WL
5 4916419 (N.D. Cal. Nov. 22, 2010).

6 The undersigned does not question these cases but notes only that they do not
7 contain analysis. Here, no party has disputed ETS' declaration of non-monetary status. Plaintiff
8 has not moved for default against this defendant.

9 Accordingly, IT IS HEREBY RECOMMENDED that: defendant ETS be
10 dismissed without prejudice.

11 These findings and recommendations are submitted to the United States District
12 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
13 fourteen (14) days after being served with these findings and recommendations, any party may
14 file written objections with the court and serve a copy on all parties. Such a document should be
15 captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the
16 objections shall be served and filed within fourteen (14) days after service of the objections. The
17 parties are advised that failure to file objections within the specified time may waive the right to
18 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

19 DATED: September 6, 2011

20 /s/ Gregory G. Hollows
21 UNITED STATES MAGISTRATE JUDGE

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