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

MARIA PENA,

Plaintiff,

CIV. NO. S-11-1761 LKK CKD PS

vs.

WELLS FARGO BANK NA, et al.,

Defendants.

ORDER AND
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). See 28 U.S.C. § 636(b)(1). On July 8, 2011, defendants filed a motion to dismiss and motion to strike. The motions were noticed to be heard on August 25, 2011 and continued by minute order for hearing on September 7, 2011.

On August 26, 2011, because plaintiff had not filed either an opposition or a statement of non-opposition to the motions, the undersigned continued the hearing on the motions to October 12, 2011; ordered plaintiff to show cause, in writing, no later than September 21, 2011, why sanctions should not be imposed for failure to timely file an opposition or a statement of non-opposition to the pending motions; and directed plaintiff to file an opposition to the motions, or a statement of non-opposition thereto, no later than September 21, 2011. The

1 undersigned further stated that “[f]ailure of plaintiff to file an opposition will be deemed a
2 statement of non-opposition to the pending motion, and may result in a recommendation that this
3 action be dismissed for lack of prosecution. See Fed. R. Civ. P. 41(b).” Id.

4 Although the deadlines have now passed, the court docket reflects that plaintiff
5 has not filed a response to the order to show cause, an opposition to the motions, or a statement
6 of non-opposition to the motions. In light of plaintiff’s failures, the undersigned will recommend
7 that this action be dismissed for failure to prosecute the action and for failure to comply with
8 court orders and Local Rules, and that defendants’ motions to dismiss and to strike be denied as
9 moot. See Fed. R. Civ. P. 41(b); L.R. 110.

10 Accordingly, IT IS HEREBY ORDERED that:

11 1. The hearing date of October 12, 2011, on defendants’ motions to dismiss and
12 to strike, is vacated; and

13 IT IS HEREBY RECOMMENDED that:

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

17 2. Defendants’ motions to dismiss and to strike (dkt. nos. 6, 7) be denied as moot;
18 and

19 3. The Clerk of Court be directed to close this case.

20 These findings and recommendations are submitted to the United States District
21 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
22 days after being served with these findings and recommendations, any party may file written
23 objections with the court and serve a copy on all parties. Such a document should be captioned
24 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections

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

3 Dated: September 23, 2011

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5 CAROLYN K. DELANEY
6 UNITED STATES MAGISTRATE JUDGE

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