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

EVE SANTOS & BRENDA
DESUASIDO,

Plaintiffs,

CIV. NO. S-11-2086 LKK CKD PS

vs.

DEUTSCHE BANK NATIONAL
TRUST COMPANY,

Defendant.

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). It was removed from Sutter County Superior Court on August 5, 2011. On August 12, 2011, defendant filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). The motion was noticed to be heard on October 5, 2011.

On September 26, 2011, because plaintiff had not filed either an opposition or a statement of non-opposition to the motion, the undersigned continued the hearing on the motion to November 9, 2011; ordered plaintiff to show cause, in writing, no later than October 19, 2011, why sanctions should not be imposed for failure to timely file an opposition or a statement of non-opposition to the pending motion; and directed plaintiff to file an opposition to the motion,

1 or a statement of non-opposition thereto, no later than October 19, 2011. Plaintiff was advised
2 that failure to file an opposition would be deemed a statement of non-opposition to the pending
3 motion and would result in a recommendation that this action be dismissed.

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 motion, or a statement of
6 non-opposition to the motion. 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 the Local Rules, and that defendant's motion to dismiss be denied as moot. See
9 Fed. R. Civ. P. 41(b); L.R. 110.

10 Accordingly, IT IS HEREBY ORDERED that:

11 1. The hearing date of November 9, 2011, on defendant's motion to dismiss, is
12 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 the Local
16 Rules;

17 2. Defendant's motion to dismiss (dkt. no. 6) be denied as moot; and

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

19 These findings and recommendations are submitted to the United States District
20 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
21 days after being served with these findings and recommendations, any party may file written
22 objections with the court and serve a copy on all parties. Such a document should be captioned
23 "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: October 20, 2011

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5 CAROLYN K. DELANEY
6 UNITED STATES MAGISTRATE JUDGE

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