

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

SUSANA M. VELASCO,

Plaintiff,

No. CIV S-11-2470 KJM EFB PS

vs.

WORLD SAVINGS BANK FSB;
WACHOVIA; ETS SERVICES, LLC;
WELLS FARGO BANK; and
DOES 1 through 10, inclusive,

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 September 16, 2011, defendant Wells Fargo Bank, N.A., formerly known as Wachovia Mortgage, FSB, formerly known as World Savings Bank, FSB, sued as World Savings Bank FSB, Wachovia, and Wells Fargo Bank (“Wells Fargo”), removed this action from Sacramento County Superior Court. Dckt. No. 1. Then, on September 23, 2011, Wells Fargo moved to dismiss plaintiff’s complaint and noticed the motion to be heard on November 9, 2011. Dckt. No. 8.

On October 31, 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 December 14, 2011; ordered plaintiff to show cause, in writing, no later than December 1, 2011,

1 why sanctions should not be imposed for failure to timely file an opposition or a statement of
2 non-opposition to the pending motion; and directed plaintiff to file an opposition to the motion,
3 or a statement of non-opposition thereto, no later than December 1, 2011. Dckt. No. 10. The
4 undersigned further stated that “[f]ailure of plaintiff to file an opposition will be deemed a
5 statement of non-opposition to the pending motion, and may result in a recommendation that this
6 action be dismissed for lack of prosecution and/or for failure to comply with court orders and
7 this court’s Local Rules. *See* Fed. R. Civ. P. 41(b).” *Id.*

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

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. The hearing date of December 14, 2011 on Wells Fargo’s motion to dismiss, Dckt.
16 No. 8, is vacated; and
17 2. The status (pretrial scheduling) conference currently set for hearing on February 1,
18 2012, is vacated.¹

19 IT IS FURTHER RECOMMENDED that:

- 20 1. This action be dismissed pursuant to Federal Rule of Civil Procedure 41(b), based on
21 plaintiff’s failure to prosecute the action and to comply with court orders and Local Rules;
22 2. Wells Fargo’s motion to dismiss, Dckt. No. 8, be denied as moot; and


23 ////

24
25 ¹ As a result, the parties are not required to submit status reports as provided in the
26 September 20, 2011 order. *See* Dckt. No. 4. However, if the recommendation of dismissal herein
is not adopted by the district judge, the undersigned will reschedule the status conference and require
the parties to submit status reports.

1 3. The Clerk be directed to close this case.

2 These findings and recommendations are submitted to the United States District Judge
3 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
4 after being served with these findings and recommendations, any party may file written
5 objections with the court and serve a copy on all parties. Such a document should be captioned
6 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
7 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
8 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

9 DATED: December 5, 2011.

10 
11 EDMUND F. BRENNAN
12 UNITED STATES MAGISTRATE JUDGE
13
14
15
16
17
18
19
20
21
22
23
24
25
26