IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

OLGA PSHEVLOVZKY,

        Plaintiff,   No. 2:12-cv-0667 JAM GGH PS

    vs.

BANK OF AMERICA, N.A.

        Defendant.   FINDINGS & RECOMMENDATIONS

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        This action was referred to the undersigned pursuant to Local Rule 302(c)(21).

Plaintiff is proceeding in pro se, having filed this action on March 16, 2012. Before this court

had the opportunity to screen the complaint and rule on the in forma pauperis application,

defendant filed a motion to dismiss on April 6, 2012. Plaintiff did not file an opposition. By

order filed May 31, 2012, the hearing on the motion was vacated due to plaintiff's failure to file

an opposition.

        Although the court liberally construes the pleadings of pro se litigants, they are

required to adhere to the rules of court. As set forth in the district court's order requiring status

report, failure to obey local rules may not only result in dismissal of the action, but "no party will

be entitled to be heard in opposition to a motion at oral arguments if opposition has not been

timely filed by that party." E. D. Cal. L. R. 230(c). More broadly, failure to comply with the

Local Rules or "any order of the court may be grounds for imposition . . . of any and all sanctions

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1   authorized by statute or Rule or within the inherent power of the Court." E. D. Cal. L. R. 110;

2   see also E. D. Cal. L. R. 183 (requiring compliance with the Local and Federal Rules by pro se

3   litigants).

4   As plaintiff failed to file an opposition, defendant's motion is considered

5   unopposed. Furthermore, the court has reviewed the motion to dismiss and finds that it has

6   merit. The only federal claims in the complaint are for violation of the Home Affordable

7   Modification Program ("HAMP") and the False Claims Act. There is no private right of action

8   under HAMP. Phipps v. Wells Fargo Bank, N.A., 2011 WL 302803, *9 (E.D. Cal. Jan. 27,

9   2011). The False Claims Act provides that a person who "knowingly presents, or causes to be

10   presented, to an officer or employee of the United States Government ... a false or fraudulent

11   claim for payment or approval ... is liable to the United States Government for a civil penalty of

12   not less than $5,000 and not more than $10,000, plus 3 times the amount of damages which the

13   Government sustains because of the act of that person...." 31 U.S.C. § 3729(a). Plaintiff has not

14   alleged that defendant Bank of America submitted a false claim to the United States Government.

15   The state law claims should be dismissed where there are no federal claims

16   remaining. This court declines to exercise supplemental jurisdiction over plaintiff's possible

17   state law claims. See 28 U.S.C. § 1367(c)(3) (The district courts may decline to exercise

18   supplemental jurisdiction over a claim ...if – the district court has dismissed all claims over

19   which it has original jurisdiction").

20   Accordingly, IT IS RECOMMENDED that:

21   1. Defendant's motion to dismiss, filed April 6, 2012, (dkt. no. 8), be granted.

22   2. This action be dismissed with prejudice.

23   These findings and recommendations are submitted to the United States District

24   Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(l). Within

25   fourteen (14) days after being served with these findings and recommendations, any party may

26   file written objections with the court and serve a copy on all parties. Such a document should be

captioned "Objections to Magistrate Judge"s Findings and Recommendations." Any reply to the objections shall be served and filed within seven (7) days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. <u>Martinez v. Ylst</u>, 951 F.2d 1153 (9th Cir. 1991).

DATED: July 3, 2012

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<u>/s/ Gregory G. Hollows</u>
UNITED STATES MAGISTRATE JUDGE
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