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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RONALD E. CEARLEY,
Plaintiff,
v.
WELLS FARGO BANK,
Defendant.

No. 2:15-cv-353-MCE-EFB PS

FINDINGS AND RECOMMENDATIONS

On May 9, 2017, defendant filed a motion to dismiss plaintiff’s second amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). ECF No. 65. On July 24, 2017, the court recommended that this action be dismissed because plaintiff had failed to file an opposition or a statement of non-opposition to the motion in violation of Local Rule 230(c). ECF No. 71. Thereafter, plaintiff filed objections to that recommendation, which indicated that plaintiff did not receive a copy of defendant’s motion to dismiss. ECF Nos. 73, 74.

In light of plaintiff’s representation, the July 24, 2017 findings and recommendations were vacated, the Clerk was directed to serve plaintiff with a copy of defendant’s motion to dismiss, and plaintiff was ordered to file an opposition or statement of non-opposition to defendant’s motion by October 4, 2017. ECF No. 75. Plaintiff was also admonished that failure to do so could result in a recommendation that this action be dismissed for lack of prosecution and/or for failure to comply with court orders and this court’s Local Rules. *Id.*

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The deadline has passed and plaintiff has not filed an opposition or statement of non-opposition to defendant's motion to dismiss.

Accordingly, it is hereby RECOMMENDED that this action be dismissed for failure to prosecute and to comply with court orders and the court's local rules. *See* Fed. R. Civ. P. 41(b); E.D. Cal. L.R. 110.

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

DATED: November 20, 2017.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE