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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ERIC S. HOWELL; GENEVIEVE F.  
HOWELL,  
  
Plaintiffs,  
  
v.  
  
PNC BANK; AND, DOES 1 THROUGH 5  
INCLUSIVE,  
  
Defendants.

No. 2:18-cv-3113 TLN DB PS

ORDER AND  
FINDINGS AND RECOMMENDATIONS

Plaintiffs are proceeding in this action pro se. This matter was, therefore, referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). By order signed May 21, 2019, plaintiffs’ complaint was dismissed, and plaintiffs were granted leave to file an amended complaint that cured the defects noted in that order. (ECF No. 12.) Plaintiffs were granted twenty-eight days from the date of that order to file an amended complaint and were specifically cautioned that the failure to respond to the court’s order in a timely manner would result in a recommendation that this action be dismissed. The twenty-eight-day period has expired, and plaintiffs have not responded to the court’s order in any manner.

Although it appears from the docket that plaintiffs’ copy of May 21, 2019 order was returned as undeliverable, plaintiffs were properly served. It is a plaintiff’s responsibility to keep

1 the court apprised of the plaintiff's current address at all times. Pursuant to Local Rule 182(f),  
2 service of documents at the record address of the party is fully effective.

3 In response to plaintiffs' failure to file a timely amended complaint, on July 31, 2019,  
4 defendant PNC Bank filed a motion to dismiss this action for lack of prosecution. (ECF No. 15.)  
5 That motion is noticed for hearing before the undersigned on September 20, 2019. Pursuant to  
6 Local Rule 230(c) plaintiffs were to file an opposition or a statement of non-opposition to  
7 defendant's motion "not less than fourteen (14) days preceding the noticed . . . hearing date."  
8 Plaintiffs, however, have failed to file a timely opposition or statement of non-opposition.

9 In light of plaintiffs' failure to file a timely amended complaint, the undersigned will  
10 recommend that this action be dismissed without prejudice due to plaintiffs' failure to file a  
11 timely amended complaint.

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. Defendant's July 31, 2019 motion to dismiss (ECF No. 15) is denied without prejudice  
14 as having been rendered moot; and
- 15 2. The September 20, 2019 hearing is vacated.<sup>1</sup>

16 Also, IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice.  
17 See Local Rule 110; Fed. R. Civ. P. 41(b).

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

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27 <sup>1</sup> In the event these findings and recommendations are not adopted in full by the assigned District  
28 Judge defendant may re-notice the motion to dismiss for hearing before the undersigned.

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The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: September 17, 2019

/s/ DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

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