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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JESSE NIETO, JR.,

Plaintiff,

v.

JP MORGAN CHASE BANK, N.A., et al.,

Defendants.

No. 2:20-cv-0422-JAM-EFB PS

ORDER

The court previously issued an order setting an initial scheduling conference for August 12, 2020, and directed the parties to file status report by no later than July 29, 2020. ECF No. 2. Defendant U.S. Bank Trust, N.A., As Trustee For LSF9 Master Participation Trust (“LSF9”) timely filed a status report (ECF No. 23), but plaintiff failed to separately file his own status report. Accordingly, the status conference was continued, and plaintiff was ordered to file a status report by August 12, 2020. ECF No. 24. He was warned that failure to do so could result in dismissal of this case. *Id.* On August 19, 2020, after plaintiff had failed to comply with the aforementioned order, the court recommended that this action be dismissed for failure to prosecute and comply with court orders. ECF No. 25. Two weeks later, on September 2, 2020, plaintiff filed objections to findings and recommendations, as well as a status report. ECF Nos. 26 & 27. He also filed a response to the court’s July 30, 2020 order to show cause, in which he explains that he failed to timely file a status report due to illness. ECF No. 28.

1 There is no question, in light of the foregoing background, that plaintiff's status report is
2 untimely. Nevertheless, the court must weigh plaintiff's obvious failure to adhere to this court's
3 deadlines against the Ninth Circuit's position that "a case should, whenever possible, be decided
4 on the merits." *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984). Given plaintiff's representation
5 that he was ill, and that he has since filed s status report, the court finds that dismissal of this
6 action is not appropriate. Accordingly, the court will: (1) vacate the recommendation that this
7 case be dismissed for failure to prosecute and comply with court orders; and (2) reset the
8 previously vacated scheduling conference.

9 Accordingly, it is ORDERED that:

- 10 1. The August 19, 2020 findings and recommendations (ECF No. 25) are VACATED;
11 2. The July 30, 2020 order to show cause is discharged, and no sanctions are imposed;

12 and

13 3. A Status (Pretrial Scheduling) Conference is set for October 15, 2020 at 10:00 a.m., in
14 Courtroom No. 8

15 DATED: September 8, 2020.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE