

1
2
3
4
5

6 IN THE UNITED STATES DISTRICT COURT

7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

8
9 JUNE BACON-BERCEY,

10 Plaintiff, No. C 11-04242 JSW

11 v.

12 ROBERT J SULLIVAN, COL (RET),

**ORDER TO SHOW CAUSE WHY
CASE SHOULD NOT BE
DISMISSED**

13 Defendant.

14
15 On July 18, 2011, Plaintiff filed a Complaint in the Small Claims division of the
16 Superior Court of the State of California for the County of San Mateo. On August 29, 2011,
17 Defendants removed the action to this Court, and the case originally assigned to Magistrate
18 Judge Spero. On September 2, 2011, Defendants filed a motion to dismiss. On September 26,
19 2011, Magistrate Judge Spero approved a stipulation regarding the briefing schedule for
20 Defendants' motion to dismiss so that the parties could pursue a possible resolution of the
21 matter.

22 Pursuant to that Stipulation, Plaintiff's opposition brief was due on October 14, 2011,
23 and Defendant's reply was due on October 24, 2011, and a hearing was scheduled for
24 November 4, 2011. On September 28, 2011, because Plaintiff did not consent to proceed before
25 Judge Spero, this matter was reassigned to the undersigned Judge, and all hearing dates were
26 vacated.¹

27
28
1 Although the reassignment order directed the parties to re-notice any pending
motions, Defendants have not re-noticed the motion on this Court's law and motion calendar.

1 According to the record, Plaintiff failed to file an opposition brief by October 14, 2011.
2 In addition, the copy of the Order issued by Judge Spero approving the briefing schedule that
3 was sent to Plaintiff has been returned with a notation “vacant - unable to forward.” (See
4 Docket No. 15.)

5 Plaintiff is HEREBY ORDERED TO SHOW CAUSE why this matter should not be
6 dismissed without prejudice for failure to prosecute. The Court notes that although Plaintiff is
7 proceeding *pro se*, pursuant to Northern District Local Rule 3-11 a party proceeding pro se
8 whose address changes while an action is pending must promptly file and serve upon all
9 opposing parties a notice of change of address specifying the new address. *See* L.R. 3-11(a).
10 The court may, without prejudice, dismiss a complaint when: (1) mail directed to the attorney or
11 the pro se party by the court has been returned to the court as not deliverable, and (2) the court
12 fails to receive within 60 days of this return a written communication from the attorney or *pro*
13 *se* party indicating a current address. *See* L.R. 3-11(b).

14 Plaintiff’s response to this Order to Show Cause shall be due by no later than November
15 4, 2011. If Plaintiff seeks to file a belated opposition brief to Defendant’s motion to dismiss,
16 she must file a copy of her opposition *with* a motion demonstrating good cause for her belated
17 filing. If the Court does not receive a response from Plaintiff by November 4, 2011, or if this
18 Order is returned, the Court shall dismiss this action without prejudice pursuant to and in
19 accordance with N.D. Civ. L.R. 3-11(b).

20 **IT IS SO ORDERED.**

21
22 Dated: October 20, 2011


23 _____
24 JEFFREY S. WHITE
25 UNITED STATES DISTRICT JUDGE
26
27
28

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

7 JUNE BACON-BERCEY, Case Number: CV11-04242 JSW
8 Plaintiff,
9 v.
10 ROBERT J SULLIVAN, COL (RET) et al,
11 Defendant
CERTIFICATE OF SERVICE

13 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

14 That on October 20, 2011, I SERVED a true and correct copy(ies) of the attached, by
15 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter
16 listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an
inter-office delivery receptacle located in the Clerk's office.

18 June Bacon-Bercey
19 250 Baldwin Avenue, PEN 901
San Mateo, CA 94401

Dated: October 20, 2011

Jennifer Ottolini

Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk