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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARITY PANTALION SEYMOUR,
Plaintiff,
v.
WILSHIRE CREDIT CORPORATION
HOME LOANS DIRECT, ET AL.,
Defendants.

No. 2:19-cv-00564-KJM-KJN PS

FINDINGS AND RECOMMENDATIONS

On June 29, 2023, the assigned district judge reassigned this case to the undersigned due to plaintiff's pro se status. (ECF No. 51.) See also L.R. 302(c)(21). On September 11, 2023, plaintiff filed a motion to appoint counsel in this case. (ECF No. 56.) Because plaintiff has not set forth exceptional circumstances, the undersigned recommends denying plaintiff's motion to appoint counsel.

Further, the assigned district judge has dismissed defendants Nationstar, Mr. Cooper, and U.S. Bank from this action; thus only defendants Wilshire Credit Corporation Home Loans Direct, DE HDL INC., and Lodes Capital Escrow Company remain. (See ECF No. 21.) Though the remaining defendants have not appeared or moved to dismiss, the undersigned further recommends dismissing the remaining defendants sua sponte and closing this case.

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1 I. Motion to Appoint Counsel, ECF No. 56

2 Under Title 28 U.S.C. § 1915, this court has discretionary authority to appoint counsel for
3 an indigent to commence, prosecute, or defend a civil action. See 28 U.S.C. § 1915(e)(1) (stating
4 the court has authority to appoint counsel for people unable to afford counsel). However, motions
5 to appoint counsel in civil cases are granted only in “exceptional circumstances.” United States v.
6 McQuade, 519 F.2d 1180, 1181 (9th Cir. 1978). The court may consider many factors to
7 determine if exceptional circumstances warrant appointment of counsel including, but not limited
8 to, proof of indigence, the likelihood of success on the merits, and the ability of the plaintiff to
9 articulate his or her claims pro se in light of the complexity of the legal issues involved. Id.
10 Here, plaintiff has not alleged exceptional circumstances that warrant appointing counsel.
11 Accordingly, the undersigned recommends that the motion to appoint counsel be DENIED.

12 II. Nonmoving defendants

13 A district court may, sua sponte, dismiss defendants who have not moved to dismiss
14 where such defendants are in a position similar to that of moving defendants or where claims
15 against such defendants are integrally related.” Silverton v. Dep’t of Treasury, 644 F.2d 1341,
16 1345 (9th Cir. 1981). “Such a dismissal may be made without notice where the [plaintiffs] cannot
17 possibly win relief.” Omar v. Sea-Land Serv., Inc., 813 F.2d 986, 991 (9th Cir. 1987). The
18 court’s authority in this regard includes sua sponte dismissal as to defendants who have not been
19 served and defendants who have not yet answered or appeared. Columbia Steel Fabricators, Inc.
20 v. Ahlstrom Recovery, 44 F.3d 800, 802 (9th Cir. 1995) (“We have upheld dismissal with
21 prejudice in favor of a party which had not yet appeared, on the basis of facts presented by other
22 defendants which had appeared”); see also Bach v. Mason, 190 F.R.D. 567, 571 (D. Idaho
23 1999); Ricotta v. California, 4 F. Supp. 2d 961, 978-79 (S.D. Cal. 1998).

24 Plaintiff’s entire complaint concerns the alleged loan rescission and impending foreclosure
25 of her home. (See generally ECF No. 1.) The moving defendants (Nationstar, Mr. Cooper, and
26 U.S. Bank) are successors-in-interest to the non-moving and remaining defendants (Wilshire
27 Credit Corporation Home Loans Direct, DE HDL INC., and Lodes Capital Escrow Company).
28 (Id.) The district judge has already determined that plaintiff’s claims against the moving

1 defendants are barred by res judicata. (ECF No. 21.) The same preclusion principles apply to the
2 remaining defendants, especially because the non-moving defendants were named as parties to
3 the original action in which a final decision on the merits was rendered. Pantalion v. ResMAE
4 Mort. Corp., No. 2:09-CV-02262-MCE-GGH, at *1 (E.D. Cal. June 23, 2010). Accordingly, the
5 court recommends DISMISSAL of the non-moving defendant's claims.


6 **FINDINGS AND RECOMMENDATIONS**

7 Accordingly, the undersigned HEREBY RECOMMENDS that:

- 8 1) The Motion to Appoint Counsel, ECF No. 56, be DENIED;
9 2) This action be dismissed as to the remaining defendants; and
10 3) The Clerk of Court be directed to close this case.

11 These findings and recommendations are submitted to the United States District Judge
12 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
13 days after being served with these findings and recommendations, any party may file written
14 objections with the court and serve a copy on all parties. Such a document should be captioned
15 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
16 shall be served on all parties and filed with the court within fourteen (14) days after service of the
17 objections. The parties are advised that failure to file objections within the specified time may
18 waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th
19 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

20 Dated: October 10, 2023

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23 KENDALL J. NEWMAN
24 UNITED STATES MAGISTRATE JUDGE

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