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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ELLEN SNOWDEN,

Plaintiff,

No. 2:09-cv-1277 LKK JFM PS

vs.

NEW CENTURY MORTGAGE  
CORP., et al.,

Defendants.

ORDER AND

FINDINGS AND RECOMMENDATIONS

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Presently calendared for hearing on October 8, 2009 is defendants' motion to dismiss. Pursuant to Local Rule 78-230(h), the court has determined that the matter will be submitted on the papers without oral argument. Upon review of the motion and the documents in support, upon hearing the arguments of counsel and good cause appearing therefor, THE COURT FINDS AS FOLLOWS:

Defendant's amended motion to dismiss, filed July 9, 2009, was noticed for hearing on August 13, 2009. Plaintiff Ellen Snowden, proceeding pro se, failed to timely file an opposition and hearing on the pending motion was continued to October 8, 2009. Plaintiff was granted an extension of time to September 10, 2009 to file opposition. Plaintiff was cautioned that failure to file opposition and appear at the hearing would be deemed as a statement of non-

1 opposition to the granting of the motion. Plaintiff has filed no opposition, although court records  
2 reflect plaintiff was properly served with notice of the continued hearing date at plaintiff's  
3 address of record.

4 Local Rule 78-230(c) provides that opposition to the granting of a motion must be  
5 filed fourteen days preceding the noticed hearing date. The Rule further provides that "[n]o party  
6 will be entitled to be heard in opposition to a motion at oral arguments if written opposition to  
7 the motion has not been timely filed by that party." Id. Finally, Local Rule 11-110 provides that  
8 failure to comply with the Local Rules "may be grounds for imposition of any and all sanctions  
9 authorized by statute or Rule or within the inherent power of the Court."

10 By order filed May 26, 2009, plaintiff was advised of the above requirements for  
11 filing opposition under the Local Rules. In addition, by order filed August 10, 2009, plaintiff  
12 was again advised of the requirements under the Local Rules, afforded additional time to file  
13 opposition, cautioned that failure to file opposition would be deemed a statement of  
14 nonopposition and would result in a recommendation that this action be dismissed pursuant to  
15 Federal Rule of Civil Procedure 41(b). Plaintiff has again failed to file opposition or otherwise  
16 respond to this court's orders. Accordingly, the court deems plaintiff's failure to oppose the  
17 motion to dismiss a withdrawal of opposition to the pending motion.

18 "Failure to follow a district court's local rules is a proper ground for dismissal."  
19 Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Pro se litigants are bound by the rules of  
20 procedure, even though pleadings are liberally construed in their favor. King v. Atiyeh, 814 F.2d  
21 565, 567 (9th Cir. 1987); Jacobsen v. Filler, 790 F.2d 1362, 1364-65 (9th Cir.1986) .

22 In determining to recommend that this action be dismissed, the court has  
23 considered the five factors set forth in Ghazali, 46 F.3d at 53. Plaintiff's failure to comply with  
24 the Local Rules has impeded the expeditious resolution of the instant litigation and has burdened  
25 the court's docket, consuming scarce judicial resources in addressing litigation which plaintiff  
26 demonstrates no intention to pursue. Although public policy favors disposition of cases on their

1 merits, plaintiff's failure to oppose the pending motion has precluded the court from doing so. In  
2 addition, defendants are prejudiced by the inability to reply to opposition and by bearing the costs  
3 of counsel attending hearings where plaintiff fails to appear. Finally, the court has repeatedly  
4 advised plaintiff of the requirements under the Local Rules and granted ample additional time to  
5 oppose the pending motion, all to no avail. The court finds no suitable alternative to dismissal of  
6 this action.

7 Accordingly, IT IS HEREBY ORDERED that the October 8, 2009 hearing is  
8 vacated; and

9 IT IS RECOMMENDED that this action be dismissed pursuant to Federal Rule of  
10 Civil Procedure 41(b).

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

19 DATED: September 14, 2009.

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22 UNITED STATES MAGISTRATE JUDGE  
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