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

NEDEZHDA NEDASHKOVSKIY,

Plaintiff,

No. CIV S-10-1598 FCD GGH PS

vs.

FIRST FRANKLIN FINANCIAL CORP., et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

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This action was referred to the undersigned pursuant to Local Rule 72-302(c)(21). This action was removed from state court on June 23, 2010. In the order requiring joint status report, filed June 24, 2010, plaintiff was advised of the requirement to obey federal and local rules, as well as orders of this court, and the possibility of dismissal for failure to do so. Defendants filed an amended motion to dismiss and an amended motion to strike on July 1, 2010. Defendants also filed an amended motion to expunge plaintiff’s notice of pendency of action and for attorney’s fees and costs on July 27, 2010. Plaintiff did not respond to any of these motions. By orders filed July 21 and September 2, 2010, the hearings on the motions were vacated due to plaintiff’s failure to file oppositions.

Although the court liberally construes the pleadings of pro se litigants, they are required to adhere to the rules of court. As set forth in the district court’s order requiring status

1 report, failure to obey local rules may not only result in dismissal of the action, but “no party will  
2 be entitled to be heard in opposition to a motion at oral arguments if opposition has not been  
3 timely filed by that party.” E. D. Cal. L. R. 230(c). More broadly, failure to comply with the  
4 Local Rules or “any order of the court may be grounds for imposition . . . of any and all sanctions  
5 authorized by statute or Rule or within the inherent power of the Court.” E. D. Cal. L. R. 110;  
6 see also E. D. Cal. L. R. 183 (requiring compliance with the Local and Federal Rules by pro se  
7 litigants).

8 “Failure to follow a district court’s local rules is a proper ground for dismissal.”  
9 Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The court should consider: (1) the public’s  
10 interest in expeditious resolution of litigation, (2) the court’s need to manage its docket, (3) the  
11 risk of prejudice to the defendants, (4) the public policy favoring disposition of cases on their  
12 merits, and (5) the availability of less drastic sanctions. Similar considerations authorize  
13 dismissal of an action for failure to prosecute pursuant to Fed. R. Civ. P. 41(b). Link v. Wabash  
14 R.R., 370 U.S. 626, 633 (1962); McKeever v. Block, 932 F.2d 795, 797 (9th Cir. 1991).  
15 Moreover, failure to obey court orders is a separate and distinct ground for imposing the sanction  
16 of dismissal. See Malone v. United States Postal Service, 833 F.2d 128, 130 (9th Cir. 1987)  
17 (setting forth same factors for consideration as Ghazali).

18 The court has considered the factors set forth in Ghazali. “[T]he key factors are  
19 prejudice and availability of lesser sanctions.” Wanderer v. Johnston, 910 F.2d 652, 656 (9th  
20 Cir.1990). Defendants are clearly prejudiced by the requirement of defending an abandoned  
21 case, and this court is put in the untenable position of expending limited judicial resources to  
22 decide such a case on the merits. The public’s interest in expeditious resolution of litigation, the  
23 court’s need to manage its docket, and the unsuitability of a less drastic sanction, direct that this  
24 case be dismissed. In sum, the court now has had much experience resolving pro se cases  
25 brought for the purpose of delaying the inevitable foreclosure of one’s home, with the same result  
26 on the merits, that the law does not provide a remedy for this unfortunate situation.

1 Accordingly, IT IS RECOMMENDED that:

2 1. This action be dismissed with prejudice pursuant to Federal Rule of Civil  
3 Procedure 41(b).

4 2. Because the complaint fails to state a “real property” claim under Cal. Code  
5 Civ. Proc. § 405.31, and plaintiff has failed to establish any “probable validity” to her claims,  
6 defendants’ amended motion to expunge notice of pendency of action, filed July 27, 2010, (dkt. #  
7 17), be granted.

8 3. Defendants’ request for attorney’s fees pursuant to Cal. Code Civ. Pro. §  
9 405.38 (having to do with infringement of lis pendens) be granted in the amount of \$573.75,<sup>1</sup> and  
10 plaintiff be directed to pay this amount to defendants within 28 days of an order adopting these  
11 findings and recommendations.

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

20 DATED: 09/15/2010

/s/ Gregory G. Hollows

21  
22 GREGORY G. HOLLOWES  
U. S. MAGISTRATE JUDGE

23 GGH:076/Nedashkovskiy1598.41.wpd  
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26 <sup>1</sup> Defendants are not granted the full amount requested because no hearing was held and  
a reply was rendered unnecessary by plaintiff’s failure to file an opposition.