

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PNC BANK, N.A., a National Association,
as successor in interest to National City
Bank,

Plaintiff,

v.

BELINDA L. SMITH, in personam;
JACOB WINDING, in personam; B & B
Dreamin' Hull No. GMKD283C505 (the
"Vessel"), its engines, machinery,
appurtenances, etc., in rem,

Defendants.

No. 2:10-cv-1916-JAM-EFB PS

ORDER AND ORDER TO SHOW CAUSE

On July 7, 2014, plaintiff filed a motion to dismiss defendant Smith's second amended counterclaim. ECF No. 142. The motion was originally noticed for hearing on August 20, 2014, *id.*, but the hearing was subsequently continued September 24, 2014. ECF No. 146.

Court records reflect that defendant Smith has not filed an opposition or statement of non-opposition to the motion to dismiss. Local Rule 230(c) provides that opposition to the granting of a motion, or a statement of non-opposition thereto, must be served upon the moving party, and filed with this court, no later than fourteen days preceding the noticed hearing date or, in this instance, by September 10, 2014. Local Rule 230(c) further provides that "[n]o party will be

////

1 entitled to be heard in opposition to a motion at oral arguments if opposition to the motion has not
2 been timely filed by that party.”

3 Local Rule 183, governing persons appearing in pro se, provides that failure to comply
4 with the Federal Rules of Civil Procedure and Local Rules may be grounds for dismissal,
5 judgment by default, or other appropriate sanctions. Local Rule 110 provides that failure to
6 comply with the Local Rules “may be grounds for imposition by the Court of any and all
7 sanctions authorized by statute or Rule or within the inherent power of the Court.” *See also*
8 *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (“Failure to follow a district court’s local rules
9 is a proper ground for dismissal.”). Pro se litigants are bound by the rules of procedure, even
10 though pleadings are liberally construed in their favor. *King v. Atiyeh*, 814 F.2d 565, 567 (9th
11 Cir. 1987).

12 Accordingly, good cause appearing, it is hereby ORDERED that:

13 1. The hearing on plaintiff’s motion to dismiss, ECF No. 142, is continued to October 15,
14 2014.

15 2. Defendant Smith shall show cause, in writing, no later than October 1, 2014, why
16 sanctions should not be imposed for failure to timely file an opposition or a statement of non-
17 opposition to the pending motion.

18 3. Defendant Smith shall file an opposition to the motion, or a statement of non-
19 opposition thereto, no later than October 1, 2014.

20 4. Failure of defendant Smith to file an opposition to the motions will be deemed a
21 statement of non-opposition thereto, and may result in a recommendation that her second
22 amended counterclaim be dismissed for lack of prosecution and/or for failure to comply with
23 court orders and this court’s Local Rules. *See Fed. R. Civ. P. 41(b)*.

24 5. Plaintiff may file a reply to defendant Smith’s opposition, if any, on or before October
25 8, 2014.

26 DATED: September 11, 2014.

27 
28 EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE