

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

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

FLOYD KNAPP,

Plaintiff,

CIV. NO. S-10-2889 KJM GGH PS

vs.

JP MORGAN CHASE BANK, N.A., et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

_____ /

This action was referred to the undersigned pursuant to Local Rule 302(c)(21). This case was removed from state court on October 27, 2010. In the order requiring joint status report, filed October 27, 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 a motion to dismiss on June 17, 2011, to which plaintiff did not respond. Plaintiff also failed to appear at the July 21, 2011 hearing.

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 report, failure to obey local rules may not only result in dismissal of the action, but “no party will be entitled to be heard in opposition to a motion at oral arguments if opposition has not been timely filed by that party.” E. D. Cal. L. R. 230(c). More broadly, failure to comply with the

1 Local Rules or “any order of the court may be grounds for imposition . . . of any and all sanctions
2 authorized by statute or Rule or within the inherent power of the Court.” E. D. Cal. L. R. 110;
3 see also E. D. Cal. L. R. 183 (requiring compliance with the Local and Federal Rules by pro se
4 litigants).

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

15 The court has considered the factors set forth in Ghazali. “[T]he key factors are
16 prejudice and availability of lesser sanctions.” Wanderer v. Johnston, 910 F.2d 652, 656 (9th
17 Cir.1990). Defendants are clearly prejudiced by the requirement of defending an abandoned
18 case, and this court is put in the untenable position of expending limited judicial resources to
19 decide such a case on the merits. The public’s interest in expeditious resolution of litigation, the
20 court’s need to manage its docket, and the unsuitability of a less drastic sanction, direct that this
21 case be dismissed.

22 The court is troubled by plaintiff’s decision not to oppose dismissal of the
23 complaint, especially because plaintiff has been fulfilling his duty under the injunctive relief
24 order to timely pay into a court escrow an amount that approximates fair rent while this eviction
25 case proceeds. In this case in particular, the court placed other matters to the side in order to
26 issue an expeditious ruling on plaintiff’s liberally construed motion for injunctive relief because

