

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

ASHWINI L. KUMAR, et al.,

Plaintiffs,

No. CIV S-11-0338 GEB GGH PS

vs.

NEW CENTURY MORTGAGE CORP., et al.,,

Defendants.

FINDINGS & RECOMMENDATIONS

_____/

This action was referred to the undersigned pursuant to Local Rule 302(c)(21). This action was removed from state court on February 4, 2011. In the order requiring joint status report, filed February 7, 2011, plaintiffs were 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. Defendant ReconTrust Company filed a motion to dismiss on January 27, 2012, to which plaintiffs did not respond.¹ By order filed March 6, 2012, the hearing on the motion was vacated due to plaintiffs' failure to file oppositions.

\\\\\\

¹ Defendants New Century Mortgage Corporation and Cal-Western Reconveyance Corporation have not appeared in the action.

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

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

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

