

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

PHILLIP McINTYRE,

Plaintiff,

v.

ALTERNATIVE LOAN TRUST 2006-
OC10, THE BANK OF NEW YORK
MELLON fka THE BANK OF NEW
YORK as TRUSTEE for the
ALTERNATIVE LOAN TRUST 2006-
OC10, and DOES 1-10,

Defendants.

No. 2:13-cv-1597-TLN-EFB PS

ORDER AND ORDER TO SHOW CAUSE

On August 18, 2014, defendants filed a motion to dismiss plaintiff’s first amended complaint and a motion to strike portions of the first amended complaint. ECF Nos. 36, 38. Defendants noticed the motions for hearing on September 24, 2014. *Id.*

Court records reflect that plaintiff has not filed an opposition or statement of non-opposition to the motions. 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 entitled to be heard in opposition to a motion at oral arguments if opposition to the motion has not been timely filed by that party.”

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

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

11 1. The hearing on defendants’ motion to dismiss and motion to strike, ECF Nos. 36, 38, is
12 continued to October 29, 2014.

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

16 3. Plaintiff shall file an opposition to the motions, or a statement of non-opposition
17 thereto, no later than October 15, 2014.

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

22 5. Defendants may file a reply to plaintiff’s opposition, if any, on or before October 22,
23 2014.

24 DATED: September 11, 2014.

25 
26 EDMUND F. BRENNAN
27 UNITED STATES MAGISTRATE JUDGE
28