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2 UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4 OAKLAND DIVISION
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6 CEP EMERY TECH INVESTORS LLC,

7 Plaintiff,

8 vs.

9 JPMORGAN CHASE BANK, N.A.,

10 Defendant.
11

Case No: C 09-04409 SBA

**ORDER DENYING PLAINTIFF'S EX
PARTE APPLICATION FOR AN
ORDER SETTING EARLIER DATE
FOR HEARING ON MOTION TO
VACATE ORDER OF DISMISSAL
AND REINSTATE ACTION**

Dkt. 57

12 On February 26, 2009, Plaintiff commenced this breach of contract action in the
13 Alameda County Superior Court. On September 18, 2009, Defendant removed this action on
14 the basis of federal question jurisdiction. Subsequently, on September 20, 2010, the Court
15 issued an Order to Show Cause as to why this action should not be dismissed under Federal
16 Rule of Civil Procedure 41(b) for lack of prosecution, on the grounds that Plaintiff had failed to
17 meet and confer with Defendant regarding the September 16, 2010 Case Management
18 Conference, had failed to file a Case Management Statement as ordered, and failed to set up the
19 call for the Case Management Conference. Dkt. 50. In that Order to Show Cause, the Court
20 directed Plaintiff to file a Certificate of Counsel by September 27, 2010 in response to the
21 order. On September 30, 2010, having received no response from Plaintiff, the Court
22 dismissed this action under Rule 41(b). Dkt. 52.

23 Nearly three months later, on December 22, 2010, Plaintiff filed a Motion to Vacate
24 Order of Dismissal and Reinstate Action ("Motion to Vacate Dismissal"). Dkt. 53. Plaintiff's
25 Motion to Vacate Dismissal is scheduled for hearing on April 5, 2011, which is the Court's
26 first available hearing date for that motion. On January 14, 2011, Plaintiff filed the instant Ex
27 Parte Application for an Order Setting Earlier Date for Hearing of Motion to Vacate Order of
28

1 Dismissal and Reinstate Action, whereby Plaintiff requests a hearing date prior to April 5, 2011
2 for Plaintiff's Motion to Vacate Dismissal. Dkt. 57.

3 Pursuant to Civil Local Rule 6-3(a)(3), a motion to shorten time must identify "the
4 substantial harm or prejudice that would occur if the Court did not change the time." Here,
5 Plaintiff contends, without elaboration, that "the parties will be prejudiced by the further delay
6 in this action which will result if the motion is not heard until April 5, 2011." Dkt. 57 at 2.¹
7 However, other than this general assertion of prejudice, Plaintiff has not identified any
8 "substantial harm or prejudice" that the parties would specifically incur. Accordingly,

9 IT IS HEREBY ORDERED THAT Plaintiff's Ex Parte Application for an Order Setting
10 Earlier Date for Hearing of Motion to Vacate Order of Dismissal and Reinstate Action is
11 DENIED. This Order terminates Docket 57.

12 IT IS SO ORDERED.

13 Dated: 1/31/11


SAUNDRA BROWN ARMSTRONG
United States District Judge

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28 ¹ Plaintiff also states that it seeks to reopen this case "due to the discovery of Plaintiff's
counsel's mental illness causing him to abandon the client and ignore the Court." Id.