

1
2
3
4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6

7 ALAN BRINKER,
8 Plaintiff,
9 v.
10 JP MORGAN CHASE N.A., et al.,
11 Defendants.

Case No. [13-cv-01805-PSG](#)

**ORDER GRANTING MOTION TO
DISMISS**

(Re: Docket No. 157)

12
13 In November 2014, Plaintiff Alan Brinker and Defendants JPMorgan Chase Bank, N.A.
14 and California Reconveyance Company reached a settlement.¹ In April of this year, the court
15 issued an order enforcing that settlement.² And yet—six months after the court’s order, and nearly
16 a year after the parties settled—this case remains on the docket. Now before the court is a motion
17 by Defendants to dismiss the case pursuant to Fed. R. Civ. P. 41(b).³ Defendants argue that
18 Brinker has failed to comply with the court’s order enforcing the settlement. Brinker opposes,
19 claiming that Defendants are the ones who have not held up their end of the bargain.⁴ For the
20 reasons set forth below, the court GRANTS Defendants’ motion.

21 Defendants have now offered a settlement contract that comports with the term sheet that
22 Brinker agreed to in 2014, but Brinker nevertheless refuses to sign. Brinker objects to Chase’s

23
24 ¹ See Docket No. 116.

25 ² See Docket No. 148.

26 ³ See Docket No. 157.

27 ⁴ See Docket No. 163.

1 refusal to repair his credit until he submits proof acceptable to Chase, but the term sheet contained
2 exactly the same language.⁵ He argues that Chase should first provide a detailed accounting, but
3 the court has already ordered that this is not necessary.⁶ He claims that the settlement agreement
4 should not release his claims against any Defendant other than Chase, but his own notice of
5 settlement included exactly that release.⁷ Brinker raises several complaints about other conditions
6 of the settlement agreement, but none of these renders the settlement agreement materially
7 different from the term sheet that Brinker already has signed. The court finds that Brinker’s
8 failure to sign the settlement agreement is unjustified—and, therefore, so is his failure to obey the
9 court’s order.

10 In *Ferdik v. Bonzelet*, the Ninth Circuit listed the factors that a court should consider in
11 deciding whether to dismiss a case for failure to comply with a court order.⁸ They include “(1) the
12 public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket;
13 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on
14 their merits; and (5) the availability of less drastic alternatives.”⁹ These factors strongly favor
15 dismissal. The case has remained pending for almost a year after the parties settled it. Defendants
16 have incurred, and continue to incur, substantial costs in trying to enforce the settlement. And the
17 court has pursued less drastic alternatives, including ordering Brinker to sign the settlement, to no
18 avail. At this point, the court’s—and Defendants’—only remaining remedy for Brinker’s
19 intransigence is dismissing the case. The case is **DISMISSED** with prejudice.

20 _____
21 ⁵ See Docket No. 130-1, Ex. A at 1 (“Upon submission of proof acceptable to Chase, Chase will
22 submit updated information to credit reporting agencies.”).

23 ⁶ See Docket No. 148 at 10-11.

24 ⁷ See Docket No. 116 at 1 (“Plaintiff Alan Brinker and Defendants JPMorgan Chase Bank, N.A.
25 and California Reconveyance Company have reached a settlement as to the above-captioned
26 matter which will resolve all causes of action against all remaining defendants.”).

27 ⁸ 963 F.2d 1258, 1260-61 (9th Cir. 1992).

28 ⁹ *Id.* (quoting *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th Cir. 1986)).

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

SO ORDERED.

Dated: October 28, 2015



PAUL S. GREWAL
United States Magistrate Judge