

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA

9 ROBERT ZAKAR,

10 Plaintiff,

11 v.

12 NATIONSTAR MORTGAGE LLC et al.,

13 Defendants.
14
15

Case No.: 3:16-CV-3029-CAB-JLB

DISMISSAL WITHOUT PREJUDICE

16 Plaintiff filed this lawsuit on December 14, 2016. Because no activity had occurred
17 on the docket as of March 27, 2017, the Court issued an order requiring Plaintiff to show
18 cause why the lawsuit should not be dismissed for failure to prosecute. Four days later,
19 Plaintiff filed proofs of service reflecting that the summons and complaint had been served
20 on four of the seven defendants on March 31, 2017. On April 7, 2017, Plaintiff responded
21 to the order to show cause stating that the remaining three defendants “have been sent out
22 for service [sic].”

23 On April 19, 2017, the four defendants who were served filed a motion to dismiss
24 the complaint for failure to state a claim. The motion included a notice of a hearing date
25 (set for briefing purposes only) of May 24, 2017. Civil Local Rule 7.1.e.2. requires a party
26 opposing a motion to file an opposition or statement of non-opposition no later than
27 fourteen calendar days before the noticed hearing. Failure to comply with these rules “may
28 constitute a consent to the granting of a motion.” Civ. Local R. 7.1.f.3.c. Here, Plaintiff’s

1 opposition to the motion to dismiss was due no later than May 10, 2017. As of the date of
2 this order, no opposition has been filed.

3 District courts have broad discretion to enact and apply local rules, including
4 dismissal of a case for failure to comply with the local rules. *Ghazali v. Moran*, 46 F.3d
5 52, 53 (9th Cir. 1995) (affirming grant of an unopposed motion to dismiss under local rule
6 by deeming a *pro se* litigant’s failure to oppose as consent to granting the motion). Before
7 dismissing an action for failure to comply with local rules, the district court “weigh[s]
8 several factors: ‘(1) the public’s interest in expeditious resolution of litigation; (2) the
9 court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
10 policy favoring disposition of cases of their merits; and (5) the availability of less drastic
11 sanctions.’” *Ghazali*, 46 F.3d at 53 (quoting *Henderson v. Duncan*, 779 F.2d 1421, 1423
12 (9th Cir. 1986)).


13 These factors weigh in favor of granting the motion to dismiss and dismissing this
14 lawsuit in its entirety for failure to prosecute. Plaintiff has made no effort to prosecute this
15 lawsuit, failing even to serve the summons and complaint until prompted by the Court.
16 Plaintiff’s lack of action is consistent with the assertion in the motion to dismiss that this
17 lawsuit is merely a continuation of a state court action and “a new attempt to prolong
18 litigation and engage in gamesmanship.” [Doc. No. 13 at 5.] Moreover, the motion itself
19 appears meritorious and equally applicable to the claims against the three defendants who
20 have yet to be served. Ultimately, based on the lack of opposition and of the apparent
21 merits of the motion itself, the Court finds that “the public’s interest in expeditious
22 resolution of litigation,” “the court’s need to manage its docket,” and “the risk of prejudice
23 to the defendants” all weigh in favor of granting the motion to dismiss and dismissing this
24 action in its entirety. See *Ghazali*, 46 F.3d at 53.

25 Accordingly, it is hereby **ORDERED** that the unopposed motion to dismiss is
26 **GRANTED** and the claims against the four defendants who filed the motion are
27 **DISMISSED WITHOUT PREJUDICE**. It is further **ORDERED** that the lawsuit is
28

1 **DISMISSED WITHOUT PREJUDICE** in its entirety with respect to all claims against
2 all defendants for failure to prosecute.

3 It is **SO ORDERED**.

4 Dated: May 22, 2017



5
6 Hon. Cathy Ann Bencivengo
7 United States District Judge
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28