

1 **WO**

2

3

4

5

6

IN THE UNITED STATES DISTRICT COURT

7

FOR THE DISTRICT OF ARIZONA

8

9

Anita Calugay,

)

No. CV-09-01947-PHX-LOA

10

Plaintiff,

)

**ORDER**

11

vs.

)

12

GMAC Mortgage; GMAC; and Green  
Tree Services,

)

13

Defendants.

)

14

\_\_\_\_\_

15

Plaintiff has failed to respond in writing to the Court's Order to Show Cause issued on January 20, 2010. (docket # 14) The Plaintiff has consented to magistrate-judge jurisdiction on October 5, 2009. (docket # 6) There has been no activity by Plaintiff in this case since

19

Plaintiff filed her *pro se* Complaint on September 18, 2009. (docket # ) The Court issued its Order to Show Cause on January 21, 2010 as a result of Plaintiff's apparent failure to complete service of process on all Defendants by January 18, 2010 per the Court's November 3, 2009 order. (docket ## 12, 14) The Court has since granted Defendant Green Tree Servicing, LLC's Motion to Dismiss with prejudice pursuant to Rule 12(b)(6), Fed.R.Civ.P. (docket #13) Further, since the issuance of the Court's January 21, 2010 Order to Show Cause, the Plaintiff's response deadline of February 2, 2010 has expired without any response. To date, Plaintiff has not complied with the Court's orders by either serving the other Defendants, GMAC Mortgage and GMAC, or

28

1 showing good cause why this lawsuit should not be dismissed in its entirety. See, LRCiv  
2 41.1 (docket ## 12 and 14) It is quite apparent that Plaintiff has abandoned this litigation.

3           In the January 21, 2010 Order to Show Cause, Plaintiff was advised that  
4 pursuant to Rule 41(b), Fed. R. Civ. P., and *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9<sup>th</sup>  
5 Cir. 1992), the Court has the inherent power to control its docket and in the exercise of  
6 that power, it may impose sanctions including, where appropriate, dismissal without  
7 prejudice for failure to prosecute or failure to comply with court orders.

8           “It is well established that the district court has the authority to dismiss or to  
9 enter default judgment, depending on which party is at fault, for failure . . . to comply  
10 with its orders.” *Flaksa v. Little River Marine Constr. Co.*, 389 F.2d 885, 887, 887 (5th  
11 Cir. 1968) (citing cases); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44-45 (1991) (court  
12 may “fashion appropriate sanction for conduct” including “outright dismissal”). “While  
13 the authority is reiterated in some of the Federal Rules of Civil Procedure for particular  
14 situations,<sup>1</sup> the power is one inherent in the courts ‘in the interest of the orderly  
15 administration of justice.’ It may be exercised *sua sponte* under proper circumstances.  
16 The exercise of the authority is discretionary, and is subject to review for abuse of  
17 discretion.” *Flaksa*, 389 F.2d at 887.

18           “Dismissal of the complaint for failure to comply with the rules [is] within  
19 the court’s discretion.” *Sergio Bautista et al. v. Los Angeles County*, 216 F.3rd 837, 841  
20 (9<sup>th</sup> Cir. 2000) (citing *Original Ballet Russe, Ltd. v. Ballet Theatre, Inc.*, 133 F.2d 187,  
21 188 (2<sup>nd</sup> Cir. 1943)). Because a district court has the inherent power to control its docket,  
22 it may exercise that power by imposing sanctions including, where appropriate, dismissal  
23 of a case. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9<sup>th</sup> Cir. 1992); *Anheuser-Busch, Inc.*

---

24  
25           <sup>1</sup> Rule 41(b), Fed. R. Civ. P., permits a district court to *sua sponte* dismiss an action  
26 for failure to comply with its orders. *Link v. Wabash R.R.*, 370 U.S. 626, 629-30 (1962);  
27 *Alexander v. Pacific Maritime Ass’n*, 434 F.2d 281, 283-84 (9th Cir. 1970); *Gonzales v.*  
28 *UNUM Life Ins. Co. of America*, 2008 WL 2610552 (N.D.Cal. 2008).

1 *v. Natural Beverage Distributions*, 69 F.3d 337, 348 (9th Cir. 1995) (public interest “in  
2 expeditious resolution of litigation,” district court’s need to manage its docket, risk of  
3 prejudice to party seeking sanctions, public policy favoring disposition on the merits,  
4 availability of lesser sanctions, bad faith of violating party, relationship between conduct  
5 and merits); *Poulis v. State Farm Fire & Cas. Co.*, 747 F.2d 863, 868 (3d Cir. 1984)  
6 (personal responsibility of party, prejudice to other party, history of dilatory conduct,  
7 willfulness or bad faith, other sanctions, merits of claim or defense).

8           In determining whether to dismiss a case for failure to comply with a court  
9 order, district courts weigh five factors: (1) the public interest; (2) the court’s need to  
10 manage the docket; (3) the risk of prejudice to the defendant; (4) the public policy  
11 favoring disposition of cases on their merits; and (5) the availability of less drastic  
12 alternatives. *Ferdik*, 963 F.2d at 1260-61. Additionally, Plaintiff’s failure in this case to  
13 comply with court orders is frustrating the court’s responsibilities mandated by Rule 1,  
14 FED.R.CIV.P., (“These rules . . . shall be construed and administered to secure the just,  
15 *speedy*, and inexpensive determination of every action.”) (emphasis added), and by the  
16 Civil Justice Reform Act of 1990, 28 U.S.C. §471 *et seq.*, such as, “setting early, firm trial  
17 dates, such that the trial is scheduled to occur to occur *within eighteen months* after the filing of  
18 the complaint. . . .” 28 U.S.C. §473(a)(2) (emphasis added). A *pro se* plaintiff’s status does  
19 not discharge her obligation to “abide by the rules of the court in which [s]he litigates.”  
20 *Carter v. Commissioner of Internal Revenue*, 784 F.2d 1006, 1008 (9<sup>th</sup> Cir. 1986).

21           After considering and weighing all five *Ferdik* factors to determine if  
22 dismissal is appropriate due to Plaintiff’s failure to comply with the Court’s orders and to  
23 serve process within 120 days of filing the Complaint per Rule 4(m), FED.R.CIV.P., the  
24 Court concludes that dismissal of Plaintiff’s Complaint without prejudice is appropriate  
25 and just under the circumstances of this case.

26 ///

27 ///

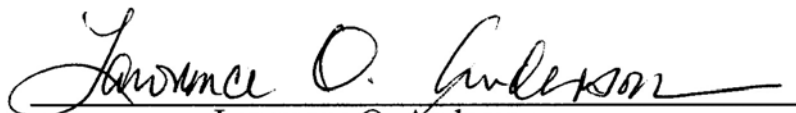
28

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

Accordingly,

**IT IS ORDERED** that Plaintiff's Complaint is hereby dismissed without prejudice. The Clerk is kindly directed to terminate this case.

Dated this 3rd day of March, 2010.

  
Lawrence O. Anderson  
United States Magistrate Judge