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2 NOT FOR PUBLICATION

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6 IN THE UNITED STATES DISTRICT COURT

7 FOR THE DISTRICT OF ARIZONA

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9 AOM Group, LLC, Trustee of Eagle Eye)  
Land Trust, Felipe Gonzalez, Beneficiary,)

No. CV-10-00088-PHX-GMS

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Plaintiff,

**ORDER**

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vs.

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Loancity; Prescott Title; Citimortgage,  
13 Inc., Mortgage Electronic Registration  
Systems, Inc.; Michael A. Bosco, Jr.;  
14 Federal Home Loan Mortgage Corp., Its  
Assignees and/or Successors-in-Interest,  
15 and Does 1-40,

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Defendants.

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19 On June 23, 2010, the Court entered an Order to Show Cause (Doc. 18) and directed  
20 Plaintiff to show cause why Defendants CitiMortgage and Federal Home Loan Mortgage  
21 Corporation should not be dismissed with prejudice. Plaintiff has failed to do so.

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The Ninth Circuit has developed “a five-part ‘test’ to determine whether a dismissal  
23 sanction is just: ‘(1) the public’s interest in expeditious resolution of the litigation; (2) the  
24 court’s need to manage its docket; (3) the risk of prejudice to the party seeking sanctions;  
25 (4) the public policy favoring disposition of cases on their merits; and (5) the availability of  
26 less drastic sanctions.’” *Valley Engineers, Inc. v. Electric Engineering Co.*, 158 F.3d 1051,  
27 1057 (9th Cir. 1998) (quoting *Malone v. USPS*, 833 F.2d 128, 130 (9th Cir. 1987)); *see also*  
28 *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999). “[W]here a court order is

1 violated, factors 1 and 2 support sanctions and 4 cuts against case dispositive sanctions, so  
2 3 and 5 . . . are decisive.” *Valley Engineers*, 158 F.3d at 1057. Factor 5 “involves  
3 consideration of three subparts: whether the court explicitly discussed alternative sanctions,  
4 whether it tried them, and whether it warned the recalcitrant party about the possibility of  
5 dismissal.” *Id.*

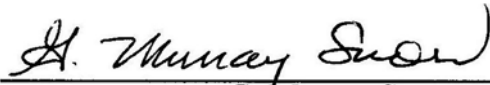
6 Considering this five-factor test, the Court concludes that dismissal is appropriate in  
7 this case. The public’s interest in expeditious resolution of litigation and the Court’s need  
8 to manage its docket require action when a plaintiff refuses to prosecute a case. In addition,  
9 Defendants will be subject to the prejudice of increasing and continuing litigation expenses  
10 if dismissal is not entered. Finally, the Court has imposed the less drastic of dismissal  
11 without prejudice in the event Plaintiff desires to reassert any claims it believes to be  
12 meritorious. Therefore,

13 **IT IS HEREBY ORDERED:**

14 1. Dismissing without prejudice Defendants CitiMortgage Incorporated and  
15 Federal Home Loan Mortgage Corporation.

16 2. Directing the Clerk of the Court to **terminate** this action.

17 DATED this 20th day of July, 2010.

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21 G. Murray Snow  
22 United States District Judge  
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