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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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13 EDITH MANABAT,

14 Plaintiffs,

15 vs.

16 SIERRA PACIFIC MORTGAGE
17 COMPANY, INC.,
et al.,

18 Defendants.
19 _____/

CASE NO. CV F 10-1018 LJO JLT

**ORDER TO DISMISS REMAINING
DEFENDANTS**
(Doc. 8.)

20 **BACKGROUND**

21 This Court's June 25, 2010 order ("June 25 order") dismissed with prejudice several defendants
22 Chase Home Finance LLC and Mortgage Electronic Registration Systems, Inc. and required plaintiff
23 Edith Manabat's ("Ms. Manabat's") counsel, no later than July 1, 2010, to file papers to show cause why
24 this Court should not dismiss this action against remaining defendants Sierra Pacific Mortgage
25 Company, Inc., McMillan Tuscany, LLC, NDEx West, LLC and Priority Posting and Publication. The
26 June 25 order "**ADMONISHES Ms. Manabat and her counsel that this Court will dismiss this**
27 **action against defendants Sierra Pacific Mortgage Company, Inc., McMillan Tuscany, LLC,**
28 **NDEx West, LLC and Priority Posting and Publication if Ms. Manabat's counsel fails to comply**

1 **with this order and fails to file timely papers to show cause why this Court should not dismiss this**
2 **action against defendants Sierra Pacific Mortgage Company, Inc., McMillan Tuscany, LLC,**
3 **NDEx West, LLC and Priority Posting and Publication.”** (Bold in original.) Ms. Manabat and/or
4 her counsel have failed to file papers to show cause why this Court should not dismiss defendants Sierra
5 Pacific Mortgage Company, Inc., McMillan Tuscany, LLC, NDEx West, LLC and Priority Posting and
6 Publication to disobey the June 25 order.

7 DISCUSSION

8 Failure To Comply With Orders

9 This Court’s Local Rule 110 provides that “[f]ailure of counsel or of a party to comply with these
10 [Local] Rules or with any order of the Court may be grounds for the imposition by the Court of any and
11 all sanctions . . . within the inherent power of the Court.” District courts have inherent power to control
12 their dockets and “in the exercise of that power, they may impose sanctions including, where appropriate
13 . . . dismissal of a case.” *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A court may
14 dismiss an action, with prejudice, based on a party’s failure to obey a court order or local rules. *See, e.g.*,
15 *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule);
16 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order
17 requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal
18 for failure to comply with local rule requiring pro se plaintiffs to keep court apprised of address); *Malone*
19 *v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court
20 order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution
21 and failure to comply with local rules).

22 In determining whether to dismiss an action for failure to comply with a court order or local rules
23 or for lack of prosecution, a court must consider several factors: (1) the public’s interest in expeditious
24 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to defendant;
25 (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic
26 alternatives. *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;
27 *Ferdik*, 963 F.2d at 1260-1261; *Ghazali*, 46 F.3d at 53.

28 In this case, the public’s interest in expeditiously resolving this litigation and the Court’s interest

1 in managing its docket weigh in favor of dismissal as Ms. Manabat and/or her counsel indicate a lack
2 of interest to further litigate or prosecute this action. The third factor -- risk of prejudice to defendant --
3 also weighs in favor of dismissal, since a presumption of injury arises from the occurrence of
4 unreasonable delay in prosecuting an action. *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).
5 The fourth factor -- public policy favoring disposition of cases on their merits -- is greatly outweighed
6 by the factors in favor of dismissal discussed herein. Finally, a court's warning to a party that its failure
7 to obey the court's order will result in dismissal satisfies the "consideration of alternatives" requirement.
8 *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-133; *Henderson*, 779 F.2d at 1424. The June 25
9 order "ADMONISHES Ms. Manabat and her counsel that this Court will dismiss this action
10 against defendants Sierra Pacific Mortgage Company, Inc., McMillan Tuscany, LLC, NDEx West,
11 LLC and Priority Posting and Publication if Ms. Manabat's counsel fails to comply with this order
12 and fails to file timely papers to show cause why this Court should not dismiss this action against
13 defendants Sierra Pacific Mortgage Company, Inc., McMillan Tuscany, LLC, NDEx West, LLC
14 and Priority Posting and Publication." (Bold in original.) Ms. Manabat and her counsel ignored the
15 June 25 order and received adequate warning that dismissal will result from disobedience of this Court's
16 order and failure to prosecute this action. Quite simply, Ms. Manabat and her counsel have failed to
17 comply with this Court's order and to meaningfully and intelligently respond.

18 CONCLUSION AND ORDER

19 For the reasons discussed above, this Court DISMISSES without prejudice this action against
20 defendants Sierra Pacific Mortgage Company, Inc., McMillan Tuscany, LLC, NDEx West, LLC and
21 Priority Posting and Publication and DIRECTS the clerk to close this action.

22 IT IS SO ORDERED.

23 Dated: July 6, 2010

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE