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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

REYNALDO ORTEGA,
Plaintiff,
v.
FEDERAL NATIONAL MORTGAGE
ASSOCIATION, et al.,
Defendants.

Case No. 1:11-cv-01848 LJO JLT

**FINDINGS AND RECOMMENDATIONS
TO DISMISS THE MATTER FOR
FAILING TO COMPLY WITH COURT
ORDERS**

On November 7, 2011, Plaintiff Reynaldo Ortega filed his Complaint for damages and injunctive relief against multiple defendants related to the refinance and subsequent foreclosure of the real property located in Bakersfield, California. (Doc. 1). For the reasons set forth below, it is recommended the matter be dismissed.

I. Procedural History

On November 10, 2011, the Court reassigned Plaintiff's action to Magistrate Judge Thurston. (Doc. 3). Since there has been no activity on this case since that time, Magistrate Judge Thurston issued an order to show cause why the matter should not be dismissed for failure to prosecute. (Doc. 4). Plaintiff was to respond to the order to show cause, no later than June 25, 2012, but has failed to do so. (Doc. 4). Plaintiff was cautioned that failure to timely respond to

1 the Court's order may result in the Court dismissing the entire matter. (Doc. 4).

2 **I. Legal Standards**

3 "District courts have inherent power to control their dockets," and in exercising that
4 power, a court may impose sanctions including dismissal of an action. *Thompson v. Housing*
5 *Authority of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action with
6 prejudice, based on a party's failure to prosecute an action or failure to obey a court order, or
7 failure to comply with local rules. *See, e.g., Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 2995)
8 (dismissal for failure to comply with local rules); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th
9 Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint);
10 *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply
11 with a court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for
12 failure to prosecute and to comply with local rules).

13 In determining whether to dismiss an action for lack of prosecution, the court must
14 consider several factors: (1) the public's interest in expeditious resolution of litigation; (2) the
15 court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
16 favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.
17 Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856 F.2d 1439 (9th
18 Cir. 1988). The Court finds that the public's interest in expeditiously resolving this litigation and
19 the court's interest in managing the docket weigh in favor of dismissal. The Court cannot hold
20 this case in abeyance indefinitely based on Plaintiff's failure to prosecute his case. The third
21 factor, risk of prejudice to defendants, also weighs in favor of dismissal, since a presumption of
22 injury arises from the occurrence of unreasonable delay in prosecuting an action. Anderson v. Air
23 West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor -- public policy favoring disposition
24 of cases on their merits -- is greatly outweighed by the factors in favor of dismissal discussed
25 herein. Finally, given Plaintiff's failure to respond to the Court's order to show cause, no lesser
26 sanction is feasible.

27 **II. Recommendation**

28 Accordingly, the Court HEREBY RECOMMENDS that this action be dismissed for

1 Plaintiff's failure to prosecute.

2 These findings and recommendations are submitted to the United States District Judge
3 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within 14 days
4 after being served with these findings and recommendations, any party may file written
5 objections with the court and serve a copy on all parties. Such a document should be captioned
6 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
7 shall be served and filed within ten days after service of the objections. The parties are advised
8 that failure to file objections within the specified time may waive the right to appeal the District
9 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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IT IS SO ORDERED.

Dated: June 28, 2012

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE