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

PATRICIA AHMADYAR, an	)	
individual, AHMAD AHMADYAR, an	)	2:09-cv-02063-GEB-EFB
individual,	)	
	)	
Plaintiffs,	)	<u>ORDER DISMISSING CASE FOR</u>
	)	<u>FAILURE TO PROSECUTE</u>
v.	)	
	)	
FIRST HORIZON HOME LOANS, a	)	
Texas corporation and a division	)	
of First Tennessee Bank National	)	
Association,	)	
	)	
Defendant.	)	
_____	)	

Since Plaintiffs have disregarded two court orders and failed to prosecute their case, Plaintiffs' claims will be dismissed with prejudice. The procedural background and basis for the dismissal follows.

Plaintiffs' claims were dismissed in an order filed March 25, 2010, in which Plaintiffs were provided fourteen days to file an amended complaint. Plaintiffs, however, did not file an amended complaint. Therefore an order issued on August 5, 2010, stating:

Plaintiffs have not filed an amended pleading or otherwise participated in this litigation. This case, therefore, has languished on the Court's docket without action for over four months. Accordingly, Plaintiffs shall file an explanation no later than August 11, 2010 at 4:30 p.m., stating

1           why their case should not be dismissed with  
2           prejudice under Federal Rule of Civil Procedure  
3           41(b) for their failure to prosecute. [citation  
4           omitted.] If Plaintiffs fail to file a timely and  
5           satisfactory explanation, this action shall be  
6           dismissed with prejudice.

7           (Docket No. 50 2:1-13.) Plaintiffs failed to file a timely response,  
8           and to date, have not responded to the August 5, 2010 order.

9           A "district court has the inherent power [to] sua sponte  
10          dismiss a case for lack of prosecution." Henderson v. Duncan, 779  
11          F.2d 1421, 1424 (9th Cir. 1986) (citing Ash v. Cvetkov, 739 F.2d, 493,  
12          496 (9th Cir. 1984)). Dismissal, however, "is a harsh penalty" and a  
13          district court must "weigh several factors in determining whether to  
14          dismiss [a] case for lack of prosecution: "(1) the public's interest  
15          in expeditious resolution of litigation; (2) the court's need to  
16          manage its docket; (3) the risk of prejudice to the defendants; (4)  
17          the public policy favoring disposition of cases on their merits and  
18          (5) the availability of less drastic sanctions." Id. (citations  
19          omitted).

20          The first and second factors weigh in favor of  
21          dismissal because Plaintiffs' non-compliance with above referenced  
22          orders has impaired the public's interest in expeditious resolution of  
23          litigation and undermines the Court's ability to manage its docket.  
24          See Yourish v. Cal. Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)  
25          ("the public's interest in expeditious resolution of litigation always  
26          favors dismissal"); Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir.  
27          2002) (stating that "[i]t is incumbent upon the Court to manage its  
28          docket without being subject to routine noncompliance of litigants").

          The third factor concerning the risk of prejudice to the  
          defendants considers the strength of a plaintiff's excuse for non-

1 compliance. See Pagtalunan, 291 F.3d at 642-43 (stating that "the  
2 risk of prejudice [is related] to the plaintiff's reason for  
3 defaulting"). Since Plaintiffs have not provided an excuse for their  
4 non-compliance, the third factor also favors dismissal.

5 The fourth factor concerning the public policy favoring  
6 disposition of cases on their merits, weighs against dismissal of  
7 Plaintiffs' case. Pagtalunan, 291 F.3d at 643 ("[p]ublic policy  
8 favors disposition of cases on the merits").

9 The fifth factor concerning whether the Court has  
10 considered less drastic sanctions, weighs in favor of dismissal. This  
11 is because Plaintiffs failed to amend their complaint within the time  
12 prescribed in the March 25, 2010 dismissal order, and to heed the  
13 warning in the August 5, 2010 order that if they failed to timely  
14 explain why this action should not be dismissed with prejudice it  
15 shall be dismissed with prejudice. See Ferdik v. Bonzelet, 963 F.2d  
16 1258, 1262 (9th Cir. 1992) (stating "a district court's warning to a  
17 party that his failure to obey the court's order will result in  
18 dismissal can satisfy the 'consideration of alternatives'  
19 requirement").

20 Since the balance of the factors strongly favors dismissal  
21 of this case with prejudice, Plaintiffs' claims are dismissed with  
22 prejudice and this case shall be closed.

23 Dated: September 12, 2010

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26 \_\_\_\_\_  
GARLAND E. BURRELL, JR.  
United States District Judge