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

VASILIIY RUSU AND NATELLA	)	
RUSU,	)	2:10-cv-01578-GEB-JFM
	)	
Plaintiffs,	)	
	)	<u>ORDER OF DISMISSAL</u>
v.	)	
	)	
BANK OF AMERICA, "MERS" MORTGAGE	)	
ELECTRONIC REGISTRATION SYSTEMS,	)	
INC., RECONTRUST CO., John or	)	
Jane DOES 1-1000, Inclusive,	)	
	)	
Defendants.	)	
_____	)	

Plaintiffs, proceeding *in propria persona*, filed the above-entitled case in the California Sacramento County Superior Court in May of 2010. Defendants removed the case to federal court, following which, the matter was referred to a United States Magistrate Judge under Local Rule 302(c)(21). Defendants filed a Motion to Dismiss Plaintiffs' Complaint under Federal Rule of Civil Procedure ("Rule") 12(b)(6) on July 7, 2010, to which Plaintiffs have not responded.

On November 17, 2010, the magistrate judge filed findings and recommendations herein, which recommend granting Defendants' Motion to Dismiss. (ECF No. 25.) The findings and recommendations, which were served on Plaintiffs, contained notice that any objections to the findings and recommendations were to be filed within fourteen days.



1 Federal Rule of Civil Procedure 41(b)." Id. at 2:4-6. Plaintiff failed  
2 to file an opposition as prescribed by the October 6, 2010 order.

### 3 II. DISCUSSION

4 District courts may dismiss an action under Rule 41(b) for  
5 failure to comply with a Local Rule or a court order. See, e.g., Ghazali  
6 v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) ("Failure to follow a district  
7 court's local rules is a proper ground for dismissal."); Ferdick v.  
8 Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992) (holding a district court  
9 may dismiss an action under Rule 41(b) "for failure to comply with any  
10 order of the court"); Hells Canyon Preservation Council v. U.S. Forest  
11 Service, 403 F.3d 683, 689 (9th Cir. 2005) (recognizing courts may  
12 dismiss an action under Rule 41(b) *sua sponte*). However, since  
13 "dismissal is a harsh penalty, it should be imposed as a sanction only  
14 in extreme circumstances." Oliva v. Sullivan, 958 F.2d 272, 273 (9th  
15 Cir. 1991).

16 When deciding whether to dismiss a case as a sanction under  
17 Rule 41(b), "the district court must consider five factors: (1) the  
18 public's interest in expeditious resolution of litigation; (2) the  
19 court's need to manage its docket; (3) the risk of prejudice to the  
20 defendants; (4) the public policy favoring disposition of cases on their  
21 merits; and (5) the availability of less drastic alternatives." Yourish  
22 v. Cal. Amplifier, 191 F.3d 983, 990 (9th Cir. 1999).

23 The first factor concerning "the public's interest in  
24 expeditious resolution of litigation always favors dismissal." Id. The  
25 second factor, i.e. the court's need to manage its docket, also weighs  
26 in favor of dismissal in this case. "The Eastern District of California  
27 is one of the busiest district courts in the United States, handling  
28 hundreds of cases on an annual basis." Reed v. California, No. CV-F-08-

1 756 OWW/GSA, 2009 WL 637114, at \*2 (E.D. Cal. March 11, 2009).  
2 Plaintiffs' failure to comply with Local Rule 230(c) and two orders  
3 issued by the Court concerning their Complaint has prevented the case  
4 from being fully scheduled for resolution since the pleadings are  
5 typically final before a case is fully scheduled. See Paqtalunan v.  
6 Galaza, 291 F.3d 639, 642 (9th Cir. 2002) (stating "[i]t is incumbent  
7 upon the Court to manage its docket without being subject to routine  
8 noncompliance of litigants").

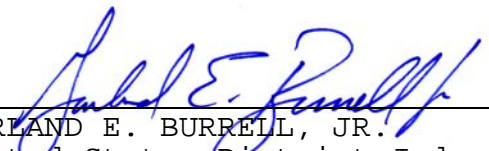
9 The third factor concerning the risk of prejudice to  
10 Defendants considers the strength of a plaintiff's excuse for  
11 non-compliance. See Paqtalunan, 291 F.3d at 642-43 (stating that "the  
12 risk of prejudice [is related] to the plaintiff's reason for  
13 defaulting"). The "pendency of a lawsuit is not sufficiently prejudicial  
14 in and of itself to warrant dismissal." Id. at 642. However, "[t]he law  
15 also presumes prejudice from unreasonable delay." In re  
16 Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217,  
17 1227 (9th Cir. 2006); see also Paqtalunan, 291 F.3d at 643 ("Unnecessary  
18 delay inherently increases the risk that witnesses' memories will fade  
19 and evidence will become stale.") This case has been pending in federal  
20 court for over six months and concerns a home loan executed in July of  
21 2004. Further, Plaintiffs have provided no reason for their  
22 non-compliance with two court orders and Local Rule 230(c). Therefore,  
23 the third factor also favors dismissal.

24 The fourth factor concerning the public policy favoring  
25 disposition of cases on their merits, weighs against dismissal of  
26 Plaintiffs' case. Paqtalunan, 291 F.3d at 643 ("Public policy favors  
27 disposition of cases on the merits").  
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1 The fifth factor concerning whether the Court has considered  
2 less drastic sanctions, also weighs in favor of dismissal since the  
3 magistrate judge provided Plaintiffs with two additional opportunities  
4 to file an opposition to Defendants' dismissal motion and explicitly  
5 warned Plaintiffs that the failure to file an opposition would result in  
6 a recommendation that the action be dismissed. See Ferdik v. Bonzelet,  
7 963 F.2d 1258, 1262 (9th Cir. 1992) (stating "explicit discussion of  
8 alternatives" is unnecessary where "the court actually *tried*  
9 alternatives before dismissing the case," and "a district court's  
10 warning to a party" that his inaction will result in dismissal "can  
11 satisfy the 'consideration of alternatives' requirement").

12 Since four of the five factors strongly favor dismissal of  
13 this action, Plaintiffs' action is dismissed with prejudice.. See Trice  
14 v. Clark County School Dist., 376 Fed. Appx. 789, 790 (9th Cir. 2010)  
15 (affirming district court's Rule 41(b) dismissal of claims for  
16 plaintiff's failure to file an opposition to defendant's dismissal  
17 motion with warning that the failure to do so would result in  
18 dismissal). Judgment shall be entered in favor of Defendants.

19 Dated: January 10, 2011

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23 GARLAND E. BURRELL, JR.  
24 United States District Judge  
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