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

ECI Financial Corp., a)	
California corporation,)	2:10-cv-02363-GEB-GGH
)	
Plaintiff,)	
)	<u>ORDER OF DISMISSAL</u>
v.)	
)	
American Home Mortgage)	
Servicing, Inc., a Delaware)	
Corporation, and Does 1-50,)	
inclusive,)	
)	
Defendants.)	
_____)	

An order issued on December 23, 2010, granting Defendant's Federal Rule of Civil Procedure ("Rule") 12(b)(6) dismissal motion. (ECF No. 10.) The December 23, 2010 Order granted Plaintiff ten (10) days to file a First Amended Complaint and warned Plaintiff that the action "may be dismissed with prejudice under [Rule] 41(b) if Plaintiff fails to file an amended complaint within the prescribed time period." Id. at 8:26-9:3. Plaintiff did not file an amended complaint within the prescribed time period. Therefore, this action will be dismissed with prejudice under Rule 41(b) for failing to comply with a court order.

"District courts have inherent power to control their dockets and may impose sanctions, including dismissal, in the exercise of that discretion." Oliva v. Sullivan, 958 F.2d 272, 273 (9th Cir. 1991).

1 However, since "dismissal is a harsh penalty, it should be imposed as a
2 sanction only in extreme circumstances." Id.

3 "Under Ninth Circuit precedent, when a plaintiff fails to
4 amend his complaint after the district judge dismisses the complaint
5 with leave to amend, the dismissal is typically considered a dismissal
6 for failing to comply with a court order rather than for failing to
7 prosecute the claim." Yourish v. Cal. Amplifier, 191 F.3d 983, 986 (9th
8 Cir. 1999). To dismiss a case as a sanction, "the district court must
9 consider five factors: (1) the public's interest in expeditious
10 resolution of litigation; (2) the court's need to manage its docket; (3)
11 the risk of prejudice to the defendants; (4) the public policy favoring
12 disposition of cases on their merits; and (5) the availability of less
13 drastic alternatives." Id. at 990 (quotation and citations omitted).

14 The first and second factors weigh in favor of dismissal in
15 this case because Plaintiff's non-compliance with above referenced order
16 has impaired the public's interest in expeditious resolution of
17 litigation and undermines the Court's ability to manage its docket. See
18 Yourish, 191 F.3d at 990 (9th Cir. 1999) ("the public's interest in
19 expeditious resolution of litigation always favors dismissal");
20 Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002) (stating "[i]t
21 is incumbent upon the Court to manage its docket without being subject
22 to routine noncompliance of litigants").

23 The third factor concerning the risk of prejudice to Defendant
24 considers the strength of a plaintiff's excuse for non-compliance. See
25 Pagtalunan, 291 F.3d at 642-43 (stating that "the risk of prejudice [is
26 related] to the plaintiff's reason for defaulting"). Since Plaintiff has
27 provided no reason for its non-compliance, the third factor also favors
28 dismissal.

1 The fourth factor concerning the public policy favoring
2 disposition of cases on their merits, weighs against dismissal of
3 Plaintiff's case. Pagtalunan, 291 F.3d at 643 ("Public policy favors
4 disposition of cases on the merits").

5 The fifth factor concerning whether the Court has considered
6 less drastic sanctions, also weighs in favor of dismissal since
7 Plaintiff failed to amend its complaint within the prescribed time
8 period despite the warning that the action could be dismissed with
9 prejudice as a result. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th
10 Cir. 1992) (stating "a district court's warning to a party that his
11 failure to obey the court's order will result in dismissal can satisfy
12 the 'consideration of alternatives' requirement").

13 The balance of the factors strongly favors dismissal of this
14 action with prejudice. Therefore, the doe defendants are dismissed, and
15 this action is dismissed with prejudice. Judgment shall be entered in
16 favor of Defendant.

17 Dated: January 5, 2011

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20 _____
GARLAND E. BURRELL, JR.
United States District Judge