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

CONSTANCE SOLANO and the SOLANO FAMILY TRUST,)	
)	2:10-cv-02426-GEB-GGH
Plaintiffs,)	
)	<u>ORDER OF DISMISSAL</u>
v.)	
)	
AMERICA'S SERVICING COMPANY, a division of WELLS FARGO, NA;)	
MORTGAGEIT, INC.; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; NDEX WEST, LLC; FINANCIAL TITLE COMPANY; U.S. BANK NA; BANC OF AMERICA FUNDING 2007-6 TRUST; MORTGAGE AND INVESTORS INVESTMENT CONSULTANTS, INC.,)	
Defendants.)	
_____)	
)	

Plaintiffs failed to file an amended complaint within the time provided in an order filed on September 27, 2011. The September 27, 2011 order granted Defendants' Federal Rule of Civil Procedure ("Rule") 12(b)(6) dismissal motion, provided Plaintiffs fourteen (14) days within which to file a Second Amended Complaint, and warned Plaintiffs "that a dismissal with prejudice could be entered under [Rule] 41(b) if Plaintiffs fail[] to file an amended complaint within the prescribed time period." (ECF No. 54, 25:6-8.) Plaintiffs did not file an amended complaint within the prescribed time period. Therefore, this action will

1 be dismissed with prejudice under Rule 41(b) because of Plaintiffs'
2 failure to comply with the September 27, 2011 order.

3 Rule 41(b) allows the court to dismiss an action for failure
4 to file an amended complaint within the period specified in an order.
5 See Yourish v. Cal. Amplifier, 191 F.3d 983, 986 (9th Cir. 1999) ("Under
6 Ninth Circuit precedent, when a plaintiff fails to amend his complaint
7 after the district judge dismisses the complaint with leave to amend,
8 the dismissal is typically considered a dismissal for failing to comply
9 with a court order rather than for failing to prosecute the claim.").
10 When determining whether a dismissal sanction is appropriate, "the
11 district court must consider five factors: (1) the public's interest in
12 expeditious resolution of litigation; (2) the court's need to manage its
13 docket; (3) the risk of prejudice to the defendants; (4) the public
14 policy favoring disposition of cases on their merits; and (5) the
15 availability of less drastic alternatives." Id. at 990 (quotation and
16 citations omitted).

17 The first and second factors weigh in favor of dismissal in
18 this case because Plaintiffs' non-compliance with the above-referenced
19 order has impaired the public's interest in expeditious resolution of
20 litigation and undermines the Court's ability to manage its docket. See
21 Yourish, 191 F.3d at 990 (9th Cir. 1999) ("[T]he public's interest in
22 expeditious resolution of litigation always favors dismissal.");
23 Paqtaalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002) ("It is
24 incumbent upon the Court to manage its docket without being subject to
25 routine noncompliance of litigants."); Oliva v. Sullivan, 958 F.2d 272,
26 273 (9th Cir. 1991) ("District courts have inherent power to control
27 their dockets and may impose sanctions, including dismissal, in the
28 exercise of that discretion.").

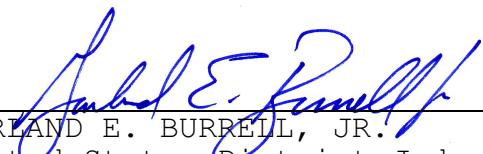
1 The third factor concerning the risk of prejudice to
2 Defendants considers the strength of a plaintiff's excuse for
3 non-compliance. See Pagtalunan, 291 F.3d at 642-43 ("[T]he risk of
4 prejudice [is related] to the plaintiff's reason for defaulting.").
5 Since Plaintiffs have provided no reason for their non-compliance, the
6 third factor also favors dismissal.

7 The fourth factor concerning the public policy favoring
8 disposition of cases on their merits, weighs against dismissal of
9 Plaintiffs' case. Pagtalunan, 291 F.3d at 643 ("Public policy favors
10 disposition of cases on the merits.").

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

19 Since the balance of the factors favors dismissal of this
20 action with prejudice, this action is dismissed with prejudice and
21 judgment shall be entered in favor of Defendants.

22 Dated: October 25, 2011

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25 _____
26 GARLAND E. BURRELL, JR.
27 United States District Judge
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