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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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11 JUNG MYN PARK, MIN SOOK SUH,

No. CIV. S-13-1717 LKK/DAD

12 Plaintiffs,

13 v.

ORDER14 BANK OF AMERICA; BANK OF
15 AMERICA, N.A.; BRIAN T.
16 MOYNIHAN, DAVID C. DARNELL;
17 GARY G. LYNCH; THOMAS K.
18 MONTAG and Does 1-XXXX, et
al.,

Defendants.

19 Plaintiffs have once again failed to file an opposition or
20 Statement of Non-Opposition in response to defendants' dismissal
21 motion. For the reasons that follow, this case will be dismissed
22 for failure to prosecute pursuant to Fed. R. Civ. P. 41(b).

23 Plaintiffs filed their initial complaint in this court on
24 August 16, 2013. Defendants moved to dismiss and noticed a
25 hearing on the motion for November 19, 2013. When plaintiffs
26 failed to respond to the dismissal motion in any way, the court
27 issued an Order To Show Cause ("OSC") why counsel should not be
28 sanctioned, and why the case should not be dismissed. ECF No. 9.

1 Plaintiffs' counsel responded to the OSC by claiming that
2 she never received the motion to dismiss. ECF No. 12. The
3 docket shows that plaintiffs' counsel was electronically served.
4 The court sanctioned plaintiffs' counsel and imposed a new
5 briefing schedule. Although the court was not impressed by the
6 excuse offered by plaintiffs' counsel, it reluctantly refrained
7 from dismissing the action in order to avoid depriving plaintiffs
8 of their day in court "due to their counsel's errors." ECF
9 No. 13. However, the court expressly put plaintiffs' counsel on
10 notice "that she must henceforth diligently review her email and
11 the electronic docket in this matter, and timely file all
12 required documents, as the court will accept no further excuses
13 going forward." Id., at 3.

14 Thereupon, plaintiff timely opposed the then-pending
15 dismissal motion. The court dismissed the complaint with leave
16 to amend the complaint. ECF No. 17. Plaintiffs timely amended
17 their complaint. ECF No. 19.

18 On February 10, 2014, defendants moved to dismiss the First
19 Amended Complaint, and noticed a hearing on the motion for March
20 17, 2014. ECF No. 20. On February 21, 2014, plaintiffs
21 acknowledged that the dismissal motion had been filed, in a
22 "Joint Status Report." ECF No. 22 ¶ (g). The Joint Status
23 Report appears to offer a summary of how plaintiffs would oppose
24 the dismissal motion, which was due on March 3, 2014. Id.
25 However, plaintiffs never filed any opposition to the dismissal
26 motion, nor any Statement of Non-Opposition.

27 Plaintiffs and their counsel have thus failed to comply with
28 the local rules for a second time, again failing to oppose

1 defendant's dismissal motion, or to file a Statement of Non-
2 Opposition. See E.D. Cal. R. 230(c). They have also failed to
3 heed the court's express warning that they must, going forward,
4 timely file required documents, or suffer dismissal or other
5 sanctions. This time around, plaintiffs were plainly aware that
6 the dismissal motion had been filed, and accordingly, their
7 failure to respond to it appears to be a willful refusal, or
8 inability, to diligently prosecute this case.

9 For the foregoing reasons, this action is dismissed for
10 failure to prosecute pursuant to Fed. R. Civ. P. 41(b).

11 IT IS SO ORDERED.

12 DATED: March 4, 2014.

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16 LAWRENCE K. KARLTON
17 SENIOR JUDGE
18 UNITED STATES DISTRICT COURT
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