

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CLIFFORD M. ANDERSON, an)	2:16-CV-01783 LEK
individual; and MARLENE J.)	
ANDERSON, an individual,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
WELLS FARGO HOME MORTGAGE)	
d/b/a AMERICA'S SERVICING)	
COMPANY, a business entity)	
from unknown; BARRETT,)	
DAFFIN, TREDER, & WEISS, LLP,)	
a business entity from)	
unknown; and DOES 1-100,)	
inclusive,)	
)	
Defendants.)	
_____)	

ORDER DISMISSING CASE WITH PREJUDICE

On June 15, 2016, Plaintiffs Clifford M. Anderson and Marlene J. Anderson ("Plaintiffs") filed their Complaint for Damages and Equitable Relief ("Complaint") in state court on June 15, 2016. [Notice of Removal, filed 7/29/16 (dkt. no. 1), Exh. A (Complaint).] On August 3, 2016, Defendant Wells Fargo Home Mortgage, doing business as America's Servicing Company ("Defendant") filed a Motion to Dismiss, which was granted in part and denied in part in an order filed on September 21, 2017 ("9/21/17 Order"). [Dkt. nos. 4, 16.] The two counts in the Complaint were dismissed without prejudice, and Plaintiffs were given until October 30, 2017 to attempt to cure the defects

identified in the 9/21/17 Order by filing an amended complaint. [9/21/17 Order at 21.] The deadline was later extended to March 5, 2018, [Minutes, filed 12/27/17 (dkt. no. 24),] and then to March 30, 2018, [EO, filed 2/28/18 (dkt. no. 27) ("2/28/18 EO")]. The 2/28/18 EO cautioned Plaintiffs that, if they did not file their amended complaint by March 30, 2018, the case would likely be dismissed without prejudice, and the matter would be closed. On March 30, 2018, Plaintiff Clifford M. Anderson submitted a letter to the Court stating Plaintiffs were unable to file an amended complaint, and they "accept your stated ruling." [Dkt. no. 28.]

Because Plaintiffs have not filed an amended complaint, this Court has the discretion to dismiss the Complaint with prejudice. See Yourish v. Cal. Amplifier, 191 F.3d 983, 988 (9th Cir. 1999) (holding the plaintiff's failure to comply with a minute order setting forth the deadline to file the amended complaint gave the district court the discretion to dismiss the case under Fed. R. Civ. P. 41(b)).¹ After weighing the five dismissal factors set forth in Dreith v. Nu Image, Inc., 648 F.3d 779, 788 (9th Cir. 2011),² this Court finds the public interest

¹ Fed. R. Civ. P. 41(b) states, in pertinent part: "If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it."

² The Ninth Circuit has

(continued...)

in the expeditious resolution of this litigation and this Court's interest in managing the docket strongly outweigh the policy favoring disposition of cases on the merits. Moreover, Defendant will not be prejudiced by dismissal because this case is in its early stages, and there are no less drastic alternatives available at this time.

Plaintiffs' Complaint, which was dismissed without prejudice in the 9/21/17 Order, is HEREBY DISMISSED WITH PREJUDICE. In other words, Plaintiffs will not be allowed to file an amended complaint in this case, and this case will be closed. This Order does not address Plaintiffs' ability to bring their claims in a new case, and this Order makes no findings or conclusions about the merits of the new case, if Plaintiffs chose to file one.

This Court DIRECTS the Clerk's Office to close the instant case immediately.

IT IS SO ORDERED.

² (...continued)

identified five factors that a district court must consider before dismissing a case . . . : (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the other party; (4) the public policy favoring the disposition of cases on their merits; and (5) the availability of less drastic sanctions.

Dreith, 648 F.3d at 788 (citations and quotation marks omitted).

DATED AT HONOLULU, HAWAII, April 6, 2018.



/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

**CLIFFORD M. ANDERSON, ET AL. VS. WELLS FARGO HOME MORTGAGE, ETC.,
ET AL; ORDER DISMISSING CASE WITH PREJUDICE**