

EXHIBIT “A”

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

RONALD S ARMSTRONG,)	Case No. C 11-4353 SC
)	
Plaintiff,)	<u>ORDER DISMISSING CASE</u>
)	
v.)	
)	
THE BANK OF NEW YORK MELLON,)	
)	
Defendant.)	
)	

On September 1, 2011, Defendant The Bank of New York Mellon ("Defendant") removed this action from Sonoma County Superior Court. ECF No. 1 ("Not. Of Removal"). On September 8, 2011, Defendant moved to dismiss and strike the Complaint, with a noticed hearing date of October 20, 2011. ECF Nos. 5 ("MTD"), 6 ("MTS"). Plaintiff Ronald S Armstrong ("Plaintiff") failed to file an opposition pursuant to Civil Local Rule 7. Plaintiff also failed to comply with the magistrate judge's Order to either consent or decline magistrate jurisdiction by September 22, 2011. ECF No. 9 ("Order to File Consent/Declination").

On September 28, 2011, the magistrate judge vacated the October 20, 2011 hearing on Defendant's Motion to Dismiss and Motion to Strike and ordered Plaintiff to show cause why the case should not be dismissed for failure to prosecute and failure to comply with court deadlines. ECF No. 11 ("Order to Show Cause").

United States District Court
For the Northern District of California

1 The magistrate judge ordered Plaintiff to file a declaration by
2 October 6, 2011. Id. Plaintiff failed to do so. On October 14,
3 2011, the magistrate judge recommended that the Court dismiss the
4 case based on Plaintiff's failure to prosecute and repeated failure
5 to comply with a court order. ECF No. 14 ("Report and
6 Recommendation"). Plaintiff has not objected to the Report and
7 Recommendation, but did file a First Amended Complaint ("FAC") on
8 October 17, 2011. ECF No. 15 ("FAC").

9 Under Rule 41(b) of the Federal Rules of Civil Procedure,
10 "[i]f the Plaintiff fails to prosecute or comply . . . with a court
11 order, a defendant may move to dismiss the action or any claim
12 against it." Fed. R. Civ. P. 41(b). Pursuant to Rule 41, a
13 district court also has the inherent power to dismiss a case on its
14 own motion. Link v. Wabash R.R. Co., 370 U.S. 626, 630 (1962);
15 Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992). "In
16 determining whether to dismiss a case for failure to comply with a
17 court order the district court must weigh five factors including:
18 (1) the public's interest in expeditious resolution of litigation;
19 (2) the court's need to manage its docket; (3) the risk of
20 prejudice to the defendants; (4) the public policy favoring
21 disposition of cases on their merits; and (5) the availability of
22 less drastic alternatives. Ferdik, 963 F.2d at 1261 (citations and
23 quotations omitted).

24 In the instant action, the first two Ferdik factors weigh in
25 favor of dismissal. Plaintiff failed to file an opposition to
26 Defendant's pending Motion to Dismiss, failed to comply with a
27 court order and deadlines, failed to respond to the Order to Show
28 Cause, and, other than filing its FAC, has made no appearance in

1 this matter since Defendant removed the Complaint. The Court has
2 the power to manage its docket without being subject to such
3 vexatious noncompliance of litigants. With respect to the third
4 factor, Plaintiff's tactics have resulted in prejudice to
5 Defendant. Plaintiff failed to file an opposition to Defendant's
6 Motion to Dismiss and then, after pertinent deadlines had expired,
7 filed a FAC to which Defendants would need to respond. As to the
8 fourth factor, Plaintiff's refusal to prosecute the case and comply
9 with court orders renders a disposition of the case on the merits
10 unlikely. As to the availability of less drastic measures, the
11 magistrate judge has already given Plaintiff an opportunity to show
12 cause as to why the case should not be dismissed. Plaintiff failed
13 to respond to the Order. Thus, the Ferdik factors weigh in favor
14 of dismissal.

15 For these reasons, the Court dismisses Plaintiff Ronald S
16 Armstrong's action.

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18 IT IS SO ORDERED.

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20 Dated: October 28, 2011

21 
22 UNITED STATES DISTRICT JUDGE
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EXHIBIT “B”



2011062062

OFFICIAL RECORDS OF
SONOMA COUNTY
JANICE ATKINSON

GENERAL PUBLIC
07/25/2011 09:52 NTA
RECORDING FEE: \$22.00
PAID

4 PGS



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4 Irvine, CA 92612
5 Tel.: (949) 419-8912
6 Fax: (888) 900-5155

6 Attorney for Plaintiff,
7 RONALD S. ARMSTRONG

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SONOMA – SANTA ROSA

11 RONALD S. ARMSTRONG,

CASE NO: *SCV 250054*

14 Plaintiff,

14 NOTICE OF PENDING ACTION

15 v.

18 The Bank of New York Mellon f/k/a The Bank
19 of New York, as Trustee for the Holders of the
20 GE-WMC Asset-Backed Pass-Through
21 Certificates, Series 2006-1; and DOES 1-10,
22 inclusive,

22 Defendants,

26 PLEASE TAKE NOTICE THAT Plaintiff, RONALD S. ARMSTRONG, ("Plaintiff") have filed
27 the following actions against Defendants, The Bank of New York Mellon f/k/a The Bank of New
28 York, as Trustee for the Holders of the GE-WMC Asset-Backed Pass-Through Certificates,

1 Series 2006-1; and DOES 1-10, inclusive, filed on or about July 25, 2011 by Plaintiff to redress
2 injuries being suffered and to be suffered as a result of Defendants' conduct.


3 **DEFENDANTS HAD THREATEN TO UNLAWFULLY TAKEN TITLE TO**
4 **PLAINTIFFS' PROPERTY.**

5 Plaintiff seeks to protect their subject property. Plaintiff is owner of property known as:
6 **3439 Moorland Avenue, Santa Rosa, CA 95407-8105.**
7 **APN: 134-111-018**

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10 **SEE ATTACHED EXHIBIT "A"**

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13 Dated: July 21, 2011

LAW OFFICES OF JOEL M. FEINSTEIN, APC

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15 
16 By: _____
17 **JOEL M. FEINSTEIN, ESQ.**
18 **Attorney for Plaintiff**
19 **RONALD S. ARMSTRONG**

12 11 05:33p

Ronald Armstrong

707-586-28

P. 9

MAY 11 2006 1:27PM

NO. 679 P. 3

File No: 06736117

EXHIBIT "A"

All that certain real property situated in the County of Sonoma, State of California, described as follows:

PARCEL ONE:

Commencing at the Easterly boundary of the Northwestern Pacific Railroad and the Southerly boundary of West Oak Avenue; thence from said Point of Beginning South 89°30' East 639.00 feet; thence South 11°10' East 152.00 feet; thence South 1°28' West 152.08 feet to a 1/2 Inch Iron pipe; thence continuing South 1°28' West a distance of 60 feet and the Point of Beginning of the parcel of land to be herein described; thence from said Point of Beginning and continuing South 1°28' West a distance of 60 feet; thence North 88°32' West a distance of 300 feet; thence North 1°26' East a distance of 60 feet West a distance of 300 feet; thence North 1°26' East a distance of 60 feet, thence South 88°32' East a distance of 300 feet to the Point of Beginning.

PARCEL TWO:

An easement for driveway purposes over a portion, of the lands of Poulsen, as described in that Deed recorded July 6, 1961 in Book 1833 of Official Records, Page 213, Serial No. G-55451, Sonoma County Records, more particularly described as follows:

Commencing at the Easterly boundary of the Northwestern Pacific Railroad and the Southerly boundary of West Oak Avenue; thence from the said Point of Commencement South 89°30' East 639 feet; thence South 11°10' East 152 feet; thence South 1°28' West 272.08 feet to the Point of Commencement of the easement to be herein described; thence from said Point of Commencement North 88°32' West a distance of 150 feet; thence South 1°28' West to the North line of the lands described in Book 3369 of Official Records, Page 678, Serial No. 589758, Sonoma County Records; thence Easterly along the said North line 150 feet, more or less, to Moorland Avenue; thence North 1°28' East 21.89 feet to the Point of Beginning.

Assessor's Parcel Number: **134-111-018**

1 ACKNOWLEDGEMENT

2 STATE OF CALIFORNIA }

3 County of Orange }

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6 On JULY 21, 2011 before me, REBECCA MANUEL NICK, a Notary Public, personally
7 appeared Joel M. Feinstein, Esq. who proved to me on the basis of satisfactory evidence to be the
8 person whose name is subscribed to the within instrument and acknowledged to me that he executed
9 the same in his authorized capacity, and that by his signature on the instrument the person executed
10 the instrument.
11

12 I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
13 paragraph is true and correct.

14 WITNESS my hand and official seal.



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18 NOTARY PUBLIC
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