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2 UNITED STATES DISTRICT COURT  
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
4 OAKLAND DIVISION  
5

6 BABATUNDE M. WHITE,

7 Plaintiffs,

8 vs.

9 GREENWICH INVESTORS XXVI, LLC,

10 Defendant.

Case No: C 08-2013 SBA

**ORDER**

11  
12 On September 16, 2008, the Court issued an Order to Show Cause (“OSC”) why the  
13 instant action should not be dismissed without prejudice for failure to comply with the  
14 Court’s prior order and for failure to prosecute. Dkt. 14. A case management conference  
15 had been scheduled for September 11, 2008. However, the parties failed to file a joint case  
16 management statement, Plaintiff failed to initiate the case management conference call and  
17 neither party appeared for the conference. Based on these actions, the Court issued its OSC  
18 ordering the parties to appear on October 16, 2008 at 3:00 p.m. to show cause why the  
19 action should not be dismissed and ordering Plaintiff to file a Certificate of Plaintiff ten  
20 days prior to the hearing to explain why the case should not be dismissed. The parties were  
21 warned that the failure to comply with the OSC would result in dismissal of the action  
22 without prejudice. Plaintiff did not file the Certificate of Plaintiff and the parties did not  
23 appear at the hearing. To date, neither party has contacted the Court.

24 A district court may sua sponte dismiss an action for failure to prosecute or to  
25 comply with a court order pursuant to Federal Rule of Civil Procedure 41(b). See Link v.  
26 Wabash R.R., 370 U.S. 626, 633 (1962); McKeever v. Block, 932 F.2d 795, 797 (9th Cir.  
27 1991). The court should consider five factors before dismissing an action under Rule  
28 41(b): (1) the public interest in the expeditious resolution of the litigation: (2) the court’s

1 need to manage its docket; (3) the risk of prejudice to the defendants; (4) the availability of  
2 less drastic sanctions; and (5) the public policy favoring the disposition of actions on their  
3 merits. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

4 The first three factors cited above weigh in favor of dismissal in light of the fact that  
5 Plaintiff has not pursued this matter for nearly three years in any fashion whatsoever. The  
6 fourth factor also weighs in favor of dismissal because less drastic sanctions would have  
7 little impact in light of the Court's prior warning that the failure to comply with its OSC  
8 would result in the dismissal of the action. Although the fifth factor appears to weigh  
9 against dismissal, dismissal is appropriate in light of the other four factors. See Pagtalunan  
10 v. Galaza, 291 F.3d 639, 643 (9th Cir. 2002) (finding district court did not abuse its  
11 discretion in dismissing petition with prejudice where three of the five factors weighed in  
12 favor of dismissal). In light of the foregoing,

13 IT IS HEREBY ORDERED THAT this action is hereby DISMISSED WITHOUT  
14 PREJUDICE for failure to prosecute, pursuant to Federal Rule of Civil Procedure 41(b).  
15 The Clerk of the Court shall close the file and terminate any pending matters.

16 IT IS SO ORDERED.

17  
18 Dated: August 12, 2011

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

WHITE et al,

Plaintiff,

v.

GREENWICH INVESTORS XXVI, LLC et al,

Defendant.

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Case Number: CV08-02013 SBA

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 12, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Babatunde White  
1644 Cipriani Place  
Brentwood, CA 94513

Dated: August 12, 2011

Richard W. Wieking, Clerk  
**By: LISA R CLARK, Deputy Clerk**

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