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6 UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
8 OAKLAND DIVISION
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10 JAMIE J. MORRIS and KATIE MORRIS,

11 Plaintiffs,

12 vs.

13 BANK OF AMERICA, successor due to the
14 acquisition of Countrywide Home Loans and
15 FEDERAL NATIONAL MORTGAGE
ASSOCIATION a/k/a FANNIE MAE,

16 Defendants.
17

Case No: C 09-2849 SBA

**ORDER GRANTING PLAINTIFFS'
REQUEST TO CONTINUE
HEARING DATE**

Dkt. 46

18
19 Plaintiffs Jamie J. Morris and Katie Morris allege that Bank of America (as the
20 successor to Countrywide Home Loans aka BAC Countrywide Home Loans Servicing LP) and
21 Federal National Mortgage Association violated federal and state laws in connection with the
22 financing of their home. On March 3, 2010, the Court granted in part and denied in part
23 Defendants' motion to dismiss for failure to state a claim. In accordance with the Court's
24 ruling, Plaintiffs filed a Second Amended Complaint on March 9, 2010.

25 On March 23, 2010, Defendants filed a motion to dismiss the Second Amended
26 Complaint. Dkt. 31. The hearing on the motion to dismiss was initially scheduled for July 14,
27 2010. Under Civil Local Rule 7-3(a), any opposition or statement of non-opposition was due
28 by June 23, 2010, which is twenty-one days prior to the hearing date. As of June 28, 2010, no

1 opposition to Defendants' motion had been filed by Plaintiffs. Therefore, by Order dated June
2 28, 2010, the Court ordered Plaintiffs, by July 5, 2010, to show cause as to why this action
3 should not be dismissed under Federal Rule of Civil Procedure 41(b) for failure to prosecute.
4 Dkt. 37.

5 On June 30, 2010, Plaintiffs' filed a Request to File Opposition Late for Good Cause,
6 on the grounds that Plaintiffs' counsel had been hospitalized for an extended period during the
7 briefing period on Defendants' motion, and counsel inadvertently failed to calendar the
8 opposition. Dkt. 39. On July 2, 2010, the Court granted Plaintiffs' motion, and continued the
9 hearing date on Defendants' motion to September 28, 2010. Id. Also, the Court ordered
10 Plaintiffs to file their opposition to the motion by July 16, 2010. Id.

11 To date, Plaintiffs have failed to file any opposition to Defendants' motion. Instead, on
12 September 17, 2010, two months after their opposition was due, Plaintiffs filed a Motion for
13 Request of Court for Changing Date of Hearing for Motion to Dismiss, asking the Court to
14 continue the September 28, 2010 hearing date, on the ground that Plaintiffs' counsel "will be
15 outside of the country." Dkt. 46 at 1.

16 Accordingly,

17 IT IS HEREBY ORDERED THAT:

18 1. Plaintiffs' Motion for Request of Court for Changing Date of Hearing for
19 Motion to Dismiss is GRANTED. The September 28, 2010 hearing on Defendants' Motion to
20 Dismiss is CONTINUED to December 7, 2010 at 1:00 p.m. Plaintiffs shall file an opposition
21 to Defendants' motion by no later than November 12, 2010. Any reply shall be filed by
22 November 18, 2010. **Absent exigent circumstances, no further requests for continuance of**
23 **the hearing date on Defendants' Motion to Dismiss will be granted.**

24 2. Plaintiffs are expressly advised that failure to file a timely opposition to
25 Defendants' Motion to Dismiss will result in dismissal of this action under Rule 41(b) without
26 further notice.

27 3. The September 28, 2010 Case Management Conference is CONTINUED to
28 December 7, 2010 at 1:00 p.m. The parties shall meet and confer prior to the conference and

1 shall prepare a joint Case Management Conference Statement which shall be filed no later than
2 ten (10) days prior to the Case Management Conference that complies with the Standing Order
3 for All Judges of the Northern District of California and the Standing Order of this Court.
4 Plaintiffs shall be responsible for filing the statement.

5 4. This Order terminates Docket 46.

6 IT IS SO ORDERED.

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8 Dated: October 28, 2010


SAUNDRA BROWN ARMSTRONG
United States District Judge

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