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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,

Case No: C 09-2849 SBA

11 Plaintiffs,

**ORDER CONTINUING HEARING
DATE AND SETTING FORTH
BRIEFING SCHEDULE**

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.
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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 ("Defendants' Motion"). Dkt. 31. The hearing on Defendants' Motion was initially
27 scheduled for July 14, 2010. Under Civil Local Rule 7-3(a), any opposition or statement of
28 non-opposition was due by June 23, 2010, which is twenty-one days prior to the hearing date.

1 As of June 28, 2010, no opposition to Defendants' Motion had been filed by Plaintiffs.
2 Therefore, by Order dated June 28, 2010, the Court ordered Plaintiffs, by July 5, 2010, to show
3 cause as to why this action should not be dismissed under Federal Rule of Civil Procedure
4 41(b) for failure to prosecute. Dkt. 37.

5 On June 29, 2010, Plaintiffs' filed a Request to File Opposition Late for Good Cause
6 ("Plaintiffs' Request"), asking for leave to file their opposition brief, attached as "Exhibit A" to
7 their request, on the grounds that Plaintiffs' counsel had been hospitalized for an extended time
8 during the briefing period on Defendants' Motion, and counsel inadvertently failed to calendar
9 the opposition. Dkt. 36. On July 2, 2010, the Court granted Plaintiffs' Request, and continued
10 the hearing date on Defendants' Motion to September 28, 2010. Id. Also, the Court ordered
11 Plaintiffs to file their opposition to Defendants' Motion by July 16, 2010. Id.

12 On September 17, 2010, Plaintiffs filed a Motion for Request of Court for Changing
13 Date of Hearing for Motion to Dismiss ("Plaintiffs' Motion"), asking the Court to continue the
14 September 28, 2010 hearing date, on the ground that Plaintiffs' counsel would "be outside of
15 the country." Dkt. 46 at 1. As of that date, Plaintiffs had not filed their opposition to
16 Defendant's Motion. On October 28, 2010, the Court granted Plaintiffs' Motion, continuing
17 the hearing date on Defendants' Motion to December 7, 2010, and ordering Plaintiffs to file
18 their opposition to Defendants' Motion by November 11, 2010.

19 To date, Plaintiffs have not filed their opposition to Defendants' Motion. On November
20 15, 2010, Defendants filed a Notice of Non-Receipt of Opposition, indicating that Plaintiffs
21 had not filed their opposition as ordered. On November 24, 2010, Plaintiffs filed a response,
22 asserting that they had already filed their opposition to Defendant's Motion on June 29, 2010
23 as Exhibit A to Plaintiffs' Request. However, Plaintiffs have not explained why they have
24 failed to comply with the Court's July 2, 2010 and October 28, 2010 Orders requiring them to
25 separately file their opposition brief. Accordingly,

26 IT IS HEREBY ORDERED THAT:

27 1. The December 7, 2010 hearing on Defendants' Motion is CONTINUED to
28 January 25, 2011 at 1:00 p.m. Plaintiffs shall file their opposition to Defendants' Motion, as a


1 separate docket entry, by no later than December 10, 2010. Any reply shall be filed by
2 December 17, 2010.

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

6 3. The December 7, 2010 Case Management Conference is CONTINUED to
7 January 25, 2011 at 1:00 p.m. The parties shall meet and confer prior to the conference and
8 shall prepare a joint Case Management Conference Statement which shall be filed no later than
9 ten (10) days prior to the Case Management Conference that complies with the Standing Order
10 for All Judges of the Northern District of California and the Standing Order of this Court.
11 Plaintiffs shall be responsible for filing the statement.

12 IT IS SO ORDERED.

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14 Dated: November 30, 2010


15 SAUNDRA BROWN ARMSTRONG
16 United States District Judge
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