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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

RAMONA ESPARZA,

Plaintiff,

vs.

FEDERAL DEPOSIT INSURANCE
CORPORATION as receiver for INDYMAC
BANK, F.S.B.,

Defendant.

Case No: C 09-03891 SBA

ORDER DISMISSING ACTION

On August 24, 2009, Plaintiff, who is proceeding pro se, commenced this action against Defendant IndyMac Bank, F.S.B. (“IndyMac”), alleging that Plaintiff was defrauded in connection with the financing of her home. On April 21, 2010, the Federal Deposit Insurance Corporation (“FDIC”) filed a motion to substitute FDIC as receiver in place of IndyMac. Plaintiff failed to file an opposition or a statement of non-opposition to FDIC’s motion. On July 26, 2010, the Court granted FDIC’s motion.

On October 4, 2010, FDIC filed a Motion to Dismiss Claims for Lack of Subject Matter Jurisdiction, or in the Alternative, for Summary Judgment (“Motion to Dismiss”). Dkt. 24. The hearing on the Motion to Dismiss was initially scheduled for November 9, 2010, and was subsequently continued by the Court to December 14, 2010. Under Civil Local Rule 7-3(a), any opposition or statement of non-opposition by Plaintiff was due by November 23, 2010, which is twenty-one days prior to the December 14, 2010 hearing date.¹ To date, Plaintiff has not filed an opposition or a statement of non-opposition to the Motion to Dismiss. The Court’s Standing Orders warn that “[t]he failure of the opposing party to file a memorandum of points

¹ Civil Local Rule 7-3(b) provides that “[i]f the party against whom the motion is directed does not oppose the motion, that party must file with the Court a Statement of Nonopposition within the time for filing and serving any opposition.”

1 and authorities in opposition to any motion shall constitute a consent to the granting of the
2 motion.”

3 The Ninth Circuit has held that the failure to file an opposition to a motion to dismiss is
4 grounds for granting the motion. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); see
5 Fed.R.Civ.P. 41(b). In Ghazali, the court noted that in exercising its discretion to dismiss the
6 action, the district court is “required to weigh several factors: ‘(1) the public’s interest in
7 expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of
8 prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits;
9 and (5) the availability of less drastic sanctions.’” Id. (quoting Henderson v. Duncan, 779 F.2d
10 1421, 1423 (9th Cir. 1986)); Fed. R. Civ. Proc. 41(b). Upon balancing the Ghazali factors
11 under the facts of this case, the Court finds that dismissal is warranted.

12 The first and second factors both favor dismissal. In addition to failing to file an
13 opposition to FDIC’s Motion to Dismiss, Plaintiff failed to file an opposition or statement of
14 non-opposition to FDIC’s prior motion to substitute in place of IndyMac. Moreover, Plaintiff
15 failed to file a Case Management Conference (“CMC”) Statement in anticipation of the CMC
16 that is scheduled for December 14, 2010. Indeed, Plaintiff has undertaken no action in this
17 Court to prosecute this action since it was filed on August 24, 2009. Plaintiff’s repeated
18 failures to comport with Court’s filing requirements undermine the Court’s ability to move the
19 case forward by entering a pretrial scheduling order or setting a trial date. Such non-
20 compliance inherently delays resolution of the case and insures to the detriment of the public.
21 See Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002) (“It is incumbent upon the Court
22 to manage its docket without being subject to routine noncompliance of litigants[.]”); Yourish
23 v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999) (recognizing court’s need to control
24 its own docket); see also Ferdik v. Bonzelet, 963 F.2d 1258, 1261 (9th Cir. 1992) (non-
25 compliance with a court’s order diverts “valuable time that [the court] could have devoted to
26 other major and serious criminal and civil cases on its docket.”). The first two Ghazali factors
27 strongly support dismissal.

1 The third factor, the risk of prejudice to the Defendant, is related to the strength of the
2 Plaintiff's excuse for the default. See Yourish, 191 F.3d at 991. Here, Plaintiff has offered no
3 "excuse" for her conduct nor is any apparent from the record. As noted, Plaintiff failed to file a
4 CMC Statement and has not otherwise attempted to contact the Court regarding her failure to
5 do so or her failure to oppose the Motion to Dismiss. Plaintiff simply has failed to provide any
6 reason whatsoever for her failure to comply with the Court's orders and none is apparent from
7 the record. These facts also weigh strongly in favor of dismissal. See Yourish, 191 F.3d at
8 991; Ghazali, 46 F.3d at 54.

9 The fourth factor, which favors disposition of cases on the merits, by definition, weighs
10 against dismissal. Pagtalunan, 291 F.3d at 643 ("Public policy favors disposition of cases on
11 the merits. Thus, this factor weighs against dismissal.").


12 As to the final factor, the Court has already considered less drastic alternatives to
13 dismissal. As noted, the Court's Standing Orders warn that as a consequence of a party's
14 failure to oppose a motion, the Court will construe such inaction as a consent to the motion.
15 "[A] district court's warning to a party that failure to obey the court's order will result in
16 dismissal can satisfy the 'consideration of [less drastic sanctions]' requirement." Ferdik, 963
17 F.2d at 1262.

18 In sum, the Court concludes that four of the five relevant factors weigh strongly in favor
19 of dismissing this action in its entirety. Id. (affirming dismissal where three factors favored
20 dismissal, while two factors weighed against dismissal). Accordingly,

21 IT IS HEREBY ORDERED THAT Defendant's unopposed Motion to Dismiss (Docket
22 24) is GRANTED. The Clerk shall close the file and terminate all pending matters and
23 deadlines. The December 14, 2010 hearing on the Motion to Dismiss is VACATED.

24 IT IS SO ORDERED.

25 Dated: December 8, 2010


SAUNDRA BROWN ARMSTRONG
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 ESPARZA et al,

5 Plaintiff,

6 v.

7 FEDERAL DEPOSIT INSURANCE
8 CORPORATION et al,

9 Defendant.

_____ /

10 Case Number: CV09-03891 SBA

11 **CERTIFICATE OF SERVICE**

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

14 That on December 8, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
16 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
17 located in the Clerk's office.

18 Ramona Esparza
19 4898 Snowy Egret Way
20 Oakley, CA 94561

21 Dated: December 8, 2010

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