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6 UNITED STATES DISTRICT COURT  
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
8 OAKLAND DIVISION

9  
10 IN RE 600 ALABAMA

Case No: C 09-4672 SBA

11 **ORDER DISMISSING APPEAL**

12  
13 Appellants filed their bankruptcy appeal with the Court on October 1, 2009. The Court  
14 established a briefing schedule whereby Appellants' opening brief was due within thirty days  
15 after perfection of the record, pursuant to Federal Rules of Bankruptcy Procedure 8006 and  
16 8007. (Docket 2.) Appellants never filed an opening brief. On June 25, 2010, the Court issued  
17 an order to show cause directing Appellants to demonstrate why their appeal should not be  
18 dismissed for failure to prosecute. The Court explicitly warned Appellants that their appeal  
19 would be dismissed if they failed to respond to the order. Appellants failed to respond to the  
20 Court's order to show cause.

21 Federal Rule of Civil Procedure 41(b) authorizes the Court to dismiss an action where  
22 plaintiff has failed to comply with the Federal Rules of Civil Procedure or any order of the  
23 court. Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992). This power derives from the  
24 district court's inherent authority to control its docket. Id. In determining whether to dismiss  
25 an action for failure to prosecute, the district court may consider: (1) the public's interest in  
26 expeditious resolution of litigation; (2) the court's needs to manage its docket; (3) the risk of  
27 prejudice to defendants; (4) the public policy favoring disposition of cases on their merits; and  
28 (5) the availability of less drastic alternatives. Moneymaker v. CoBen (In re Eisen), 31 F.3d

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1 1447, 1451 (9th Cir. 1994) (citing Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986));  
2 Thompson v. Housing Auth. of City of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986).

3 Although a discussion of these factors is preferable, it is not an explicit requirement. Ferdick,  
4 963 F.2d at 1262.

5 In the instant case, the Court recognizes the preference for resolving matters on the  
6 merits. Nonetheless, the remaining factors weigh in favor of dismissing the appeal. The  
7 interests expressed in the first two factors are directly contravened by Appellants' failure to file  
8 their opening brief. See Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002) ("It is  
9 incumbent upon the Court to manage its docket without being subject to routine noncompliance  
10 of litigants"); Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999) (recognizing  
11 court's need to control its own docket); see also Ferdik v. Bonzelet, 963 F.2d 1258, 1261 (9th  
12 Cir. 1992) (non-compliance with a court's order diverts "valuable time that [the court] could  
13 have devoted to other major and serious criminal and civil cases on its docket").

14 The next factor, the risk of prejudice to the opposing party, is related to the strength of  
15 the Appellants' excuse for the default. See Yourish, 191 F.3d at 991. Here, Appellants have  
16 offered no "excuse" for their conduct nor is any apparent from the record.

17 Finally, the Court has considered less drastic alternatives to dismissal. As noted, the  
18 Court afforded Appellants an opportunity to be heard prior to dismissing the action. "[A]  
19 district court's warning to a party that failure to obey the court's order will result in dismissal  
20 can satisfy the 'consideration of [less drastic sanctions]' requirement." Ferdik, 963 F.2d at  
21 1262. Accordingly,

22 IT IS HEREBY ORDERED THAT that the instant bankruptcy appeal is DISMISSED  
23 under Federal Rule of Civil Procedure 41(b) for failure to prosecute. The Clerk shall close the  
24 file and terminate any pending matters.

25 IT IS SO ORDERED.

26 Dated: July 1, 2010

27   
28 SAUNDRA BROWN ARMSTRONG  
United States District Judge

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

4 IN RE 600 ALABAMA et al,  
5  
6 Plaintiff,

7 v.

8 IN RE 600 ALABAMA et al,  
9  
10 Defendant.

11 \_\_\_\_\_/

Case Number: CV09-04672 SBA

**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 July 2, 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 U.S. Bankruptcy Court, No. District of CA (San Francisco)  
19 Clerk's Office  
20 235 Pine Street  
21 P.O. Box 7341  
22 San Francisco, CA 94120-7341

23 Dennis Montali  
24 US Bankruptcy Court  
25 Northern District of California  
26 P. O. Box 7341  
27 235 Pine Street  
28 San Francisco, CA 94120-7341

Dated: July 2, 2010

Richard W. Wieking, Clerk

By: LISA R CLARK, Deputy Clerk