

1  
2  
3  
4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA  
6  
7

8 STEPHANIE JOHNSON,

9 Plaintiff(s),

No. C 09-5547 PJH

10 v.

**ORDER OF DISMISSAL FOR  
FAILURE TO PROSECUTE**

11 EXCLUSIVE MORTGAGE SERVICES,  
12 et al.,

13 Defendant(s).  
\_\_\_\_\_ /

14 The complaint in this matter was filed on November 11, 2009 and an initial case  
15 management conference was scheduled for March 4, 2010 at 2:00 p.m. Plaintiff failed to  
16 appear at the conference and an order to show cause why the case should not be  
17 dismissed for failure to prosecute was issued that same day, scheduling a hearing for  
18 March 18, 2010 at 2:00 p.m. and advising plaintiff that the case would be dismissed if she  
19 failed to appear at the hearing on the OSC. Plaintiff was further advised that no proof of  
20 service on any defendant had been filed and that the deadline for serving all defendants  
21 was March 10, 2010 pursuant to Fed. R. Civ. P. 4(m).

22 Plaintiff did not appear at the hearing on the OSC, and no proofs of service have  
23 been filed.

24 The court having considered the five factors set forth in *Malone v. United States*  
25 *Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987), and having determined that  
26 notwithstanding the public policy favoring the disposition of actions on their merits, the  
27 court's need to manage its docket and the public interest in the expeditious resolution of the  
28 litigation require dismissal of this action. In view of plaintiff's lack of response to this court's  
prior order(s), the court finds there is no appropriate less drastic sanction. Accordingly, this

1 action is dismissed with prejudice pursuant to Fed. R. Civ. pro. 41(b) for plaintiff's failure to  
2 prosecute. A further basis for dismissal is for failure to serve pursuant to Rule 4(m).

3

4 **SO ORDERED.**

5 Dated: March 18, 2010



---

6 PHYLLIS J. HAMILTON  
7 United States District Judge

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28