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28UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

NORMA CABUSAS, et al.,

Plaintiffs,

v.

KAY-CO INVESTMENT, INC., et al.,

Defendants.

No. C 12-1133 PJH

**ORDER DISMISSING CASE**

Plaintiffs having filed the above-entitled action on March 7, 2012, and having failed to comply with the court's order to serve the defendants and file a proof of service with the court by December 31, 2012, the case is hereby DISMISSED pursuant to Federal Rule of Civil Procedure 41(b) for failure to prosecute and failure to comply with an order of the court.

The court finds that dismissal is warranted based on the factors articulated by the Ninth Circuit. See, e.g., Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002); Carey v. King, 856 F.2d 1439, 1440 (9th Cir.1988). Dismissal is appropriate based on the public's interest in expeditious resolution of litigation and the court's need to balance its docket. Further, plaintiffs having failed to serve defendants, despite the court's extension of time for service well beyond the 120 days allowed under Federal Rule of Civil Procedure 4(m), cuts against any possible prejudice plaintiffs might suffer because of a dismissal. The court previously offered a less drastic alternative – an extension of time for service – but plaintiffs

1 failed to comply. Accordingly, the court finds that no less drastic alternative to dismissal is  
2 now available. In view of the above findings, the public policy favoring disposition of cases  
3 on their merits is insufficient to preclude dismissal in this case.

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**IT IS SO ORDERED.**

Dated: January 29, 2013



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PHYLLIS J. HAMILTON  
United States District Judge