

1  
2 UNITED STATES DISTRICT COURT  
3 NORTHERN DISTRICT OF CALIFORNIA  
4

5 RODOLFO AND ROBERTA E. THOMAS,  
6

7 Plaintiff(s),

No. C 12-4290 PJH

8 v.

**ORDER OF DISMISSAL**

9 CHEVY CHASE BANK F.S.B.,  
10

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

11 This matter was before the court on defendant Chevy Chase Bank's motion to  
12 dismiss, filed on October 23, 2012. Plaintiffs did not oppose the motion. The court granted  
13 defendant's motion on January 2, 2013, as it could not find any discernable legal basis for  
14 the complaint. Specific instructions on how to amend were provided in the January 2, 2013  
15 order and a deadline of January 23, 2013 was set. The deadline passed and plaintiffs did  
16 not file the amended complaint as ordered.

17 Accordingly, the court having considered the five factors set forth in *Malone v.*  
18 *United States Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987), and having determined  
19 that notwithstanding the public policy favoring the disposition of actions on their merits, the  
20 court's need to manage its docket and the public interest in the expeditious resolution of the  
21 litigation require dismissal of this action. In view of plaintiffs' lack of response to this court's  
22 prior order, the court finds there is no appropriate less drastic sanction.  
23 Accordingly, this action is dismissed with prejudice pursuant to Fed. R. Civ. P. 41(b) for  
24 plaintiffs' failure to prosecute.

25 **IT IS SO ORDERED.**

26 Dated: February 8, 2013

27   
28 \_\_\_\_\_  
PHYLLIS J. HAMILTON  
United States District Judge