

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DAVID WYNN MILLER, EDUARDO R. DIAO, and MARIA AIDA C. DIAO,)	Case No.: 12-CV-05585-LHK
)	
Plaintiffs,)	ORDER DISMISSING CASE WITHOUT PREJUDICE
v.)	
)	
BANK OF AMERICA, N.A., PRLAP, INC.,)	
)	
Defendants.)	

Plaintiffs David Wynn Miller, Eduardo R. Diao, and Maria Aida C. Diao (collectively, “Plaintiffs”) filed their complaint in federal court on October 31, 2012. ECF No. 1. Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, Plaintiffs were required to serve Defendants within 120 days of the filing of the complaint. Fed. R. Civ. P. 4(m) (“If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against the defendant or order that service be made within a specified time.”). 120 days from the filing of Plaintiffs’ complaint was February 28, 2013. However, as of April 1, 2013, Plaintiffs had failed to submit any documentation demonstrating that they had properly served Defendants.

Moreover, Plaintiffs failed to comply with the Court’s requirements regarding Case Management Conferences. On January 28, 2013, the Court set a Case Management Conference for March 27, 2013, and stated that the Case Management Statement was due by March 20, 2013. See

1 ECF No. 6. Plaintiffs failed to file a timely Case Management Statement in violation of Civil
2 Local Rule 16-10 of the United States District Court for the Northern District of California.
3 Plaintiffs also failed to appear at the Case Management Conference.

4 In light of Plaintiffs' failure to serve Defendants, failure to file a Case Management
5 Statement, and failure to appear at the March 27, 2013 Case Management Conference, the Court,
6 on April 1, 2013, ordered Plaintiffs to show cause why this case should not be dismissed for failure
7 to prosecute.¹ ECF No. 9 ("OSC"). The Court ordered that Plaintiffs file a response to the OSC
8 by April 12, 2013. The Court set a hearing on the OSC for April 17, 2013, at 2:00 p.m. The Court
9 also advised Plaintiffs that if Plaintiffs failed to respond to the OSC and to appear at the April 17,
10 2013 hearing, Plaintiffs' case would be dismissed without prejudice for failure to prosecute.

11 Plaintiffs did not respond to the OSC. Plaintiffs also did not appear at the April 17, 2013
12 hearing. Accordingly, in light of Plaintiffs' failure to respond to the OSC and failure to appear at
13 the OSC hearing, the Court hereby DISMISSES Plaintiffs' case without prejudice for failure to
14 prosecute. The Clerk shall close the file.

15 **IT IS SO ORDERED.**

16 Dated: April 17, 2013



LUCY H. KOH
United States District Judge

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¹ This Order corrected an error in the Court's March 28, 2013 Order to Show Cause. ECF No. 8.