

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
10

11 CARLOS M. ROSALES; GLORIA S.  
12 ROSALES,

13 Plaintiffs,

14 vs.

15 THE MORTGAGE STORE FINANCIAL,  
16 INC.; INDYMAC FINANCIAL SERVICES;  
17 COUNTRYWIDE HOME LOANS;  
18 MORTGAGE ELECTRONIC  
19 REGISTRATION SYSTEMS, INC.; DOES  
20 1-100 inclusive; COUNTRYWIDE  
21 FINANCIAL CORPORATION;  
22 COUNTRYWIDE BANK, F.S.B.;  
23 RECONSTRUST COMPANY; INDYMAC  
24 BANK, F.S.B.; FEDERAL DEPOSIT  
INSURANCE CORPORATION; FEDERAL  
DEPOSIT INSURANCE CORPORATION,  
CONSERVATOR FROM INDYMAC  
FEDERAL BANK, F.S.B.; ONE WEST  
BANK, F.S.B.; IMB HOLD CO., LLC; IMB  
MANAGEMENT HOLDINGS, L.P.; BANK  
OF AMERICA CORPORATION; ANGELO  
MOZILO; DAVID SAMBOL;  
COUNTRYWIDE HOME LOANS, INC.,

25 Defendants.  
26

CASE NO. 09-CV-235- IEG (JMA)

ORDER:

(1) DIRECTING PLAINTIFFS TO  
RESPOND TO DEFENDANTS'  
MOTION TO DISMISS, and

(2) VACATING HEARING DATE.

[Doc. No. 35]

27 This matter involves a nonjudicial foreclosure on Plaintiffs' real property following the  
28 nonpayment of a secured loan. On March 23, 2009, Plaintiffs filed a 313-page First Amended

1 Complaint, alleging sixty-one causes of action ranging from RICO violations to actions under the Ku  
2 Klux Klan Act of 1871. [Doc. No. 14]. Finding the First Amended Complaint to be “repetitious and  
3 needlessly long,” the Court dismissed it pursuant to Federal Rule of Civil Procedure 8(a) on June 16,  
4 2009, granting Plaintiffs leave to amend. [Doc. No. 30]. On June 30, 2009, Plaintiffs filed an 80-page  
5 Second Amended Complaint. [Doc. No. 31].

6 Currently before the Court is Motion to Dismiss Plaintiffs’ Second Amendment Complaint,  
7 filed by defendants Countrywide Home Loans, Inc., Countrywide Financial Corporation, Countrywide  
8 Bank, F.S.B., Recontrust Company, Mortgage Electronic Registration Systems, Inc., and Bank of  
9 America, N.A. (“Moving Defendants”). [Doc. No. 35]. The motion was filed on July 31, 2009, and  
10 the hearing on the motion was scheduled for September 28, 2009. Under the Civil Local Rules, this  
11 meant that Plaintiffs’ response to the motion was due on or before September 14, 2009. See CIV. L.R.  
12 7.1(e)(2). To date, Plaintiffs neither filed a response nor sought additional time in which to file one.

### 13 LEGAL STANDARD

14 Civil Local Rule 7.1(f)(3)(a) provides that a party opposing a motion “*shall* file a written  
15 opposition” or “a written statement that the party does not oppose the motion.” Id. 7.1(f)(3)(a)  
16 (emphasis added). If the opposing party fails to respond, “that failure may constitute a consent to the  
17 granting of a motion.” Id. 7.1(f)(3)(c).

### 18 DISCUSSION

19 In this case, the granting of Moving Defendants’ motion would result in dismissal of the  
20 action. Because dismissal is a harsh penalty, however, the Court will give Plaintiffs a chance to  
21 comply with the Local Rules. Therefore, the Court hereby ORDERS that Plaintiffs file a written  
22 opposition to or a written statement that they do not oppose the Motion to Dismiss by **October 13,**  
23 **2009**. The Court emphasizes that a failure to comply with this order will result in dismissal of the  
24 Second Amended Complaint with prejudice. See FED. R. CIV. P. 41(b); see also Bautista v. Los  
25 Angeles County, 216 F.3d 837, 841 (9th Cir. 2000) (“District courts have the inherent power to control  
26 their dockets and in the exercise of that power they may impose sanctions including, where  
27 appropriate, dismissal of a case.” (citation omitted)); Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995)  
28 (per curiam) (“Failure to follow a district court’s local rules is a proper ground for dismissal.” (citation

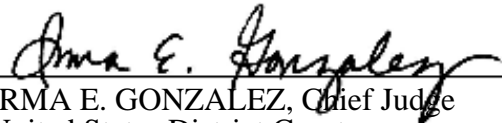
1 omitted)).

2 **CONCLUSION**

3 For the foregoing reasons, the Court ORDERS that Plaintiffs respond to Moving Defendants'  
4 Motion to Dismiss by October 13, 2009. Moreover, in light of this order, the Court VACATES the  
5 hearing set for September 28, 2009.

6 **IT IS SO ORDERED.**

7  
8 DATED: September 23, 2009

9   
10 IRMA E. GONZALEZ, Chief Judge  
11 United States District Court  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28