

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

ISIDRO TAON CALUB AND MYRNA	)	CIVIL NO. 10-00139 LEK-BMK
VICENTE CALUB,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
BANK OF AMERICA, N.A., ET	)	
AL.,	)	
	)	
Defendants.	)	
_____	)	

**ORDER DISMISSING CASE WITH PREJUDICE**

On May 31, 2011, the Court granted in part and denied in part Defendants Bank of America, N.A., BAC Home Loans Servicing, LP, and Countrywide Home Loans, Inc.'s (collectively "Defendants") Motion to Dismiss First Amended Complaint ("Motion"), filed on February 28, 2011. [Dkt. no. 40.] The Court's May 31, 2011 Order ("Order") dismissed Plaintiffs Isidro Taon Calub and Myrna Vicente Calub's ("Plaintiffs") First Amended Complaint without prejudice, and ordered Plaintiffs to file their Second Amended Complaint by **June 20, 2011**. In the Order, the Court cautioned Plaintiffs that, if they did not file a Second Amended Complaint by **June 20, 2011**, the Court would dismiss the claims against Defendants with prejudice. Plaintiffs did not file a Second Amended Complaint by June 20, 2011.

Federal Rule of Civil Procedure 16(f)(1) provides, in

pertinent part:

On motion or on its own, the court may issue any just orders, including those authorized by Rule 37(b)(2)(A)(ii)-(vii), if a party or its attorney:

(C) fails to obey a scheduling or other pretrial order.

Rule 37(b)(2)(A)(v) provides that the court may "dismiss[] the action or proceeding in whole or in part[.]" Fed. R. Civ. P. 37(b)(2)(A)(v).

Plaintiffs failed to obey the Court's May 31, 2011 Order. After weighing the five dismissal factors set forth in Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000),<sup>1</sup> the Court finds that the public interest in expeditious resolution of this litigation and the Court's interest in managing the docket strongly outweigh the policy favoring disposition of cases on the merits. Moreover, the defendants will not be prejudiced by dismissal, and there are no less drastic alternatives available at this time.

In accordance with the foregoing, the Complaint is  
HEREBY DISMISSED WITH PREJUDICE.

In light of this Court's ruling, Defendants Bank of

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<sup>1</sup> The Ninth Circuit has delineated five factors a district court must weigh in determining whether to dismiss a case for failure to comply with a court order: "1) the public interest; 2) the court's need to manage the docket; 3) the risk of prejudice to the defendant; 4) the public policy favoring disposition of cases on their merits; and 5) the availability of less drastic alternatives." Bautista, 216 F.3d at 841 (citation omitted).

America, N.A., BAC Home Loans Servicing, LP, and Countrywide Home Loans, Inc.'s Motion to Dismiss Action Pursuant to Rule 41(b), filed June 23, 2011, [dkt. no. 42,] is DENIED as MOOT.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, July 1, 2011.



/S/ Leslie E. Kobayashi  
Leslie E. Kobayashi  
United States District Judge

**ISIDRO TAO CALUB, ET AL. V. BANK OF AMERICA, ET AL; CIVIL NO. 10-00139 LEK-BMK; ORDER DISMISSING CASE WITH PREJUDICE**