

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 LAC T. HOILIEN, also known as)
4 Lac T. Hoilen,) Case No.: 2:10-cv-01258-GMN-LRL
5 Plaintiff,)
6 vs.) ORDER
7 BANK OF AMERICA, et al.,)
8 Defendants.)
9

10 Before the Court is Defendants Bank of America, N.A.; Recontrust Company,
11 N.A.; and Countrywide KB Home Loans' Motion to Dismiss (ECF No. 6) and Defendant
12 First American Title Insurance Company's Motion to Dismiss (ECF No. 12). Plaintiff
13 Lac Hoilien ("Plaintiff") has not filed a Response to either Motion. For the reasons that
14 follow, both Motions to Dismiss will be GRANTED.

15 I. BACKGROUND

16 This lawsuit was filed in this Court on July 27, 2010. In her Complaint, Plaintiff--
17 a pro se litigant--alleges a number of causes of action against Defendants related to the
18 foreclosure of one of her mortgages. In both the Notice of Lis Pendens (ECF No. 2) and
19 the Complaint (ECF No. 1), Plaintiff lists her address as: Lac Hoilien/7205 Mountain
20 Den Avenue/Las Vegas, NV 89179.

21 On August 17, 2010, Defendants Bank of America, N.A.; Recontrust Company,
22 N.A.; and Countrywide KB Home Loans filed a Motion to Dismiss (ECF No. 6).
23 Pursuant to D. Nev. R. 7-2(b), Plaintiff had fourteen days after service of the Motion to
24 file a Response. A physical copy of the Motion was sent to Plaintiff's address by first
25 class mail on August 17, 2010 (Mot. 18, ECF No. 6); therefore, Plaintiff had until

1 September 3, 2010 to file a Response. Not only did Plaintiff fail to meet this deadline,
2 Plaintiff has failed to file any Response at all.

3 On September 28, 2010, Defendant First American Title Insurance Company filed
4 a Motion to Dismiss (ECF No. 12). Pursuant to D. Nev. R. 7-2(b), Plaintiff had fourteen
5 days after service of the Motion to file a Response. A physical copy of the Motion was
6 sent to Plaintiff's address by first class mail on September 28, 2010, (Mot. 19, ECF No.
7 12); therefore, Plaintiff had until October 15, 2010 to file a Response. Not only did
8 Plaintiff fail to meet this deadline, Plaintiff has failed to file any Response at all. Local
9 Rule of Civil Practice 7-2(d) provides that "[t]he failure of an opposing party to file
10 points and authorities in response to any motion shall constitute a consent to the granting
11 of the motion."

12 Part of the reason for Plaintiff's failure to respond may be that she provided the
13 Court with an incorrect mailing address. It appears that several Minute Orders sent to the
14 address Plaintiff provided have been returned as undeliverable. (*See* ECF Nos. 5, 10, &
15 14.) Further, it appears as though the copies of the first Motion to Dismiss (ECF No. 6),
16 the Request for Judicial Notice (ECF No. 8), and the Non-Opposition to Motion to
17 Dismiss (ECF No. 9) mailed to Plaintiff's address by Defendants were returned as
18 undeliverable. (*See* ECF No. 11.) If Plaintiff has, indeed, failed to notify the Court of a
19 change in address, that, too, would be a violation of the Local Rules, as Local Rule of
20 Special Proceedings and Appeals 2-2 provides that "[t]he plaintiff shall immediately file
21 with the court written notification of any change of address. The notification must
22 include proof of service upon each opposing party or the party's attorney. Failure to
23 comply with this rule may result in dismissal of the action with prejudice." *See also ACV*
24 *International, LLC v. White*, No. 2:07-cv-00214-RCJ-PAL, 2008 WL 5273694, at *2 (D.
25 Nev. Dec. 16, 2008) (finding a violation of LSR 2-2 in a civil proceeding where a *pro se*,

1 non-prisoner party failed to update his address with the Court).

2 **II. DISCUSSION**

3 As the Ninth Circuit has explained, “[f]ailure to follow a district court’s local
4 rules is a proper ground for dismissal.” *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995);
5 *see, e.g., Roberts v. United States of America*, No. 01-cv-1230-RLH-LRL, 2002 WL
6 1770930, at *1 (D. Nev. June 13, 2002). However, before dismissing a case for failing to
7 follow local rules, the district court must weigh five factors: “(1) the public’s interest in
8 expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk
9 of prejudice to defendants/respondents; (4) the availability of less drastic sanctions; and
10 (5) the public policy favoring disposition of cases on their merits.” *Pagtalunan v. Galaza*,
11 291 F.3d 639, 642 (9th Cir. 2002).

12 Under this test, “the public’s interest in expeditious resolution of litigation always
13 favors dismissal.” *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999).
14 Further, the Court’s need to manage its docket is manifest. *See State Farm Mutual*
15 *Automobile Insurance Company v. Ireland*, No. 2:07-cv-01541-RCJ-RJJ, 2009 WL
16 4280282, at *3 (D. Nev. Nov. 30, 2009). The risk of prejudice to Defendants is also quite
17 high, as Plaintiff’s failure to respond to Defendants’ Motions and failure to apprise the
18 Court of her current address has unreasonably delayed the resolution of this case, and
19 such unreasonable delay “creates a presumption of injury to the defense,” *Henderson v.*
20 *Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986).

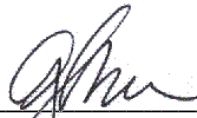
21 The fifth factor also does not weigh in favor of Plaintiff because it does not appear
22 that this case was likely to be decided on the merits anyway: Plaintiff has failed to
23 provide an accurate address to which correspondence can be directed and has done little
24 to prosecute the case in the eight months that it has been pending other than file the
25 Complaint and execute the Summons. Further, because the Court will grant dismissal

1 without prejudice, a disposition on the merits will still be possible. These four factors
2 outweigh factor (4) and, accordingly, Defendants' Motions to Dismiss are GRANTED.

3 **CONCLUSION**

4 IT IS HEREBY ORDERED that Defendants' Motions to Dismiss (ECF No. 6 &
5 12) are **GRANTED**. This case is **DISMISSED without prejudice**.

6 DATED this 16th day of March, 2011.

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10 Gloria M. Navarro
11 United States District Judge