

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 MARQUES and VERONICA GRADY,)
4)

5 Plaintiffs,)

6 vs.)

7 BAC HOME LOAN SERVICING, LP, et)

8 al.,)

9 Defendants.)

Case No.: 2:11-cv-00183-GMN-LRL

ORDER

10 Before the Court are Defendants Mortgage Electronic Registration Systems, Inc.
11 and BAC Home Loans Servicing, LP’s Motion to Dismiss (ECF No. 13) and Defendant
12 Quicken Loan’s Motion to Dismiss (ECF No. 16). Plaintiffs, who are represented by
13 counsel, have not filed a Response to either of the Motions to Dismiss. Defendants have,
14 however, filed Notices of Non-Opposition (ECF Nos. 18 & 19). For the reasons that
15 follow, both of the Motions to Dismiss will be GRANTED. Plaintiffs’ Complaint will be
16 dismissed without prejudice.

17 **I. BACKGROUND**

18 This lawsuit was originally filed on February 2, 2011 in this court. Plaintiffs’
19 Complaint alleges a number of causes of action against Defendants related to the
20 foreclosure proceedings that have been initiated against Plaintiffs’ residence.

21 On May 20, 2011, Defendants Mortgage Electronic Registration Systems, Inc. and
22 BAC Home Loans Servicing, LP filed a Motion to Dismiss (ECF No. 13). Pursuant to D.
23 Nev. R. 7-2(b), Plaintiffs had fourteen days after service of the Motion to file a Response;
24 therefore, Plaintiffs had until June 6, 2011 to file a Response. Not only did Plaintiffs fail
25 to meet this deadline, Plaintiffs have failed to file any Response at all.

1 On June 9, 2011, Defendant Quicken Loan filed its own Motion to Dismiss (ECF
2 No. 16). Plaintiff has also failed to respond to that Motion to Dismiss, though their
3 Response was due on June 25, 2011.

4 **II. DISCUSSION**

5 Local Rule 7-2 (d) provides that “[t]he failure of an opposing party to file points
6 and authorities in response to any motion shall constitute a consent to the granting of the
7 motion.” D. Nev. R. 7-2(d). As the Ninth Circuit has held, “[f]ailure to follow a district
8 court’s local rules is a proper ground for dismissal.” *Ghazali v. Moran*, 46 F.3d 52, 53
9 (9th Cir. 1995); see, e.g., *Roberts v. United States of America*, 01-cv-1230-RLH-LRL,
10 2002 WL 1770930 (D. Nev. June 13, 2002). However, before dismissing a case for
11 failing to follow local rules or for failure to prosecute, the district court must weigh five
12 factors: “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s
13 need to manage its docket; (3) the risk of prejudice to defendants/respondents; (4) the
14 availability of less drastic sanctions; and (5) the public policy favoring disposition of
15 cases on their merits.” *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002).

16 Under this test, “the public’s interest in expeditious resolution of litigation always
17 favors dismissal.” *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999).
18 Also, the Court’s need to manage its docket is manifest. See *State Farm Mutual*
19 *Automobile Insurance Company v. Ireland*, 2:07-cv-01541-RCJ-RJJ, 2009 WL 4280282
20 (D. Nev. Nov. 30, 2009). Further, Plaintiffs’ failure to respond to Defendants’ Motions
21 has unreasonably delayed the resolution of this case, and such unreasonable delay
22 “creates a presumption of injury to the defense,” *Henderson v. Duncan*, 779 F.2d 1421,
23 1423 (9th Cir. 1986).

24 The fifth factor also does not weigh in favor of Plaintiffs because it does not
25 appear that this case was likely to be decided on the merits anyway: Plaintiffs have

1 utterly failed to Respond to Defendants' Motions even though the first due date for a
2 Response was over one month ago. The Court has no reason to believe that Plaintiffs or
3 their counsel will show a better degree of diligence in other aspects of this lawsuit.

4 These four factors outweigh factor (4) and, accordingly, Defendants' Motions to
5 Dismiss are GRANTED. Plaintiffs' Complaint shall be dismissed without prejudice.

6 **CONCLUSION**

7 **IT IS HEREBY ORDERED** that Defendants' Motions to Dismiss (ECF Nos. 13
8 & 16) are **GRANTED**. Plaintiffs' Complaint is **DISMISSED without prejudice**.

9 DATED this 7th day of July, 2011.

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12 Gloria M. Navarro
13 United States District Judge
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