

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 JACK D. SANDRIDGE; BOONYUEN)
4 SANDRIDGE,)

5 Plaintiffs,)

6 vs.)

7 UNIVERSAL MORTGAGE)
8 CORPORATION; MORTGAGE)
9 ELECTRONIC REGISTRATION)
10 SYSTEMS, INC. (MERS);)
11 RECONTRUST COMPANY, N.A.;)
12 BANK OF AMERICA, N.A. AS)
13 SUCCESSOR BY MERGER TO BAC)
14 HOME LOANS SERVICING LP FKA)
15 COUNTRYWIDE HOME LOANS)
16 SERVICING LP,)

17 Defendants.)

Case No.: 2:13-cv-00640-GMN-GWF

ORDER

18 Before the Court is the Motion to Dismiss (ECF No. 16) filed by Defendants.

19 Also pending before the Court is the Motion to Expunge Lis Pendens (ECF No. 17) filed
20 by Defendants. Plaintiffs have failed to file a Response to either of the pending motions.
21 For the reasons that follow, the Court GRANTS Defendants' Motion and will dismiss
22 Plaintiffs' Complaint.

23 I. BACKGROUND

24 Plaintiffs Jack D. Sandridge and Boonyuen Sandridge originally filed this lawsuit
25 on March 27, 2013 in Nevada state court. (Pet. for Removal Ex. A ("Compl."), ECF No.
1-1.) Defendants removed the case to this Court on April 16, 2013. (Pet. for Removal,
ECF No. 1.) Plaintiffs' Complaint alleges five causes of action against Defendants
related to foreclosure proceedings that were initiated against Plaintiffs' property:

1 (1) wrongful foreclosure; (2) quiet title; (3) fraud; (4) set aside unlawful trustee's sale;
2 and (5) injunctive relief. (Compl. ¶¶ 35–76.)

3 On September 4, 2013, Defendants filed a Motion to Dismiss. (ECF No. 16.)
4 Pursuant to Local Rule 7-2(b) of the Local Rules of Practice of the United States District
5 Court for the District of Nevada, Plaintiffs had fourteen days after service of the Motion
6 to file a Response. Furthermore, the Court twice provided Plaintiffs with lengthy
7 extensions of this deadline. (See ECF Nos. 21, 24.) Accordingly, Plaintiffs had until
8 April 15, 2014, to file a Response. Nevertheless, Plaintiffs have failed to file a response.

9 **II. DISCUSSION**

10 Local Rule 7-2(d) provides that “[t]he failure of an opposing party to file points
11 and authorities in response to any motion shall constitute a consent to the granting of the
12 motion.” D. Nev. R. 7-2(d). As the Ninth Circuit has held, “[f]ailure to follow a district
13 court’s local rules is a proper ground for dismissal.” *Ghazali v. Moran*, 46 F.3d 52, 53
14 (9th Cir. 1995); see, e.g., *Roberts v. United States of America*, No. 2:01-cv-1230-RLH-
15 LRL, 2002 WL 1770930 (D. Nev. June 13, 2002). However, before dismissing a case for
16 failing to follow local rules or for failure to prosecute, the district court must weigh five
17 factors: “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s
18 need to manage its docket; (3) the risk of prejudice to defendants/respondents; (4) the
19 availability of less drastic sanctions; and (5) the public policy favoring disposition of
20 cases on their merits.” *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002).

21 Under this test, “the public’s interest in expeditious resolution of litigation always
22 favors dismissal.” *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999). Also, the
23 Court’s need to manage its docket is manifest. See *State Farm Mut. Auto. Ins. Co. v.*
24 *Ireland*, No. 2:07-cv-01541-RCJ-RJJ, 2009 WL 4280282 (D. Nev. Nov. 30, 2009).
25 Further, Plaintiffs’ failure to timely respond to Defendants’ motion has unreasonably

1 delayed the resolution of this case, and such unreasonable delay “creates a presumption
2 of injury to the defense.” *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986).
3 Less drastic sanctions available to the Court include dismissal of Plaintiffs’ Complaint
4 without prejudice.

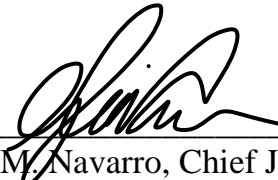
5 The fifth factor also does not weigh in favor of Plaintiffs because it is not clear
6 that this case was likely to be decided on the merits. Plaintiffs have failed to take any
7 action since the Motion to Dismiss was filed. Even if the Court were to reach the merits
8 of this action, each of Plaintiffs claims either fails as a matter of law or is rendered moot
9 by the May 13, 2013, Notice of Rescission. (Mot. to Dismiss Ex. J, ECF No. 16-10.) *See*
10 *also* Nev. Rev. Stat. § 107.080(5) (requiring a court to declare a trustee’s sale void if the
11 trustee failed to comply with the requirements of section 107.080). Accordingly, the
12 Court concludes that consideration of the five factors discussed above weighs in favor of
13 dismissal.

14 **III. CONCLUSION**

15 **IT IS HEREBY ORDERED** that the Motion to Dismiss (ECF No. 16) and the
16 Motion to Expunge Lis Pendens are **GRANTED**. Plaintiffs’ Complaint is **DISMISSED**
17 **without prejudice**.

18 The Clerk of the Court shall enter judgment accordingly.

19 **DATED** this 18 day of April, 2014.

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23 Gloria M. Navarro, Chief Judge
24 United States District Judge
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