

**UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO**

RIVER RUN FAMILY TRUST,

Plaintiff,

vs.

DEUTSCHE BANK TRUST COMPANY
AMERICAS AS TRUSTEE FOR RALI
2005QA31, FIRST AMERICAN TITLE
INSURANCE COMPANY, MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, INC.
("MERS") AS NOMINEE FOR AEGIS
WHOLESALE CORPORATION, ITS
SUCCESSORS AND ASSIGNS, CAL-WESTERN
RECONVEYANCE CORPORATION, AEGIS
WHOLESALE CORPORATION; and JOHN
DOES 1 THROUGH 10,

Defendants.

Civil No. 1:12-cv-00083-EJL-REB

REPORT AND RECOMMENDATION

I. REPORT

Currently pending before the Court are Defendants' Motion to Take Judicial Notice (Docket No. 6) and Motion to Dismiss (Docket No. 7) – both filed on March 23, 2012. Plaintiff's responses to these motions were due on or before April 16, 2012.

On March 26, 2012, this Court mailed to Plaintiff a *Notice to Pro Se Litigants of the Summary Judgment Rule Requirements*, informing Plaintiff of the nature of Defendants' motions. *See* 3/26/12 Notice (Docket No. 8) ("If the motion is granted, some or all of your claims will be dismissed, and there will be no trial or evidentiary hearing on those claims.").

Not receiving any response to Defendants' motions, on May 2, 2012, this Court ordered Plaintiff to respond to Defendants' Motion to Dismiss on or before May 11, 2012 or risk the

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dismissal of its claims. *See* 5/2/11 DEO (Docket No. 12) (“Defendants filed their Motion to Dismiss on March 23, 2012. Plaintiff’s response thereto was due on or before April 16, 2012. To date, Plaintiff has not responded to Defendants’ Motion to Dismiss. Plaintiff shall respond to Defendants’ Motion to Dismiss on or before May 11, 2012; otherwise, Plaintiff’s claims may be dismissed.”).

Despite these notices, to date, Plaintiff has not responded to Defendants’ motions; indeed, Plaintiff has not participated in this action since originally filing this action in state court on December 29, 2011, before its removal to this Court – over seven months ago. *See* Compl. (Docket No. 1, Att. 2).

District of Idaho Local Civil Rule 41.1 provides that “[a]ny civil case in which no action of record has been taken by the parties for a period of six months will, after sufficient notice, be dismissed by the Court for lack of prosecution.” Dist. Idaho Loc. Civ. R. 41.1; *see also* Fed. R. Civ. P. 41(b); *Royse v. Vasquez*, 899 F.2d 19 (9th Cir. 1990) (upholding dismissal with prejudice for failure to prosecute, after weighing following five factors: “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.”) (unpublished) (internal citations omitted).

Under the circumstances reflected by the instant record, the undersigned believes that this action should be dismissed for failure to prosecute. As to the first two factors identified in *Royse* (*see supra*), Plaintiff’s refusal to comply with this Court’s orders impeded resolution of the case and prevented the district court from adhering to its scheduled docket. The third factor also lends support because the Defendants were prejudiced by the irremediable costs and burdens

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imposed upon them. Additionally, the multiple warnings given to Plaintiff sufficed to meet the consideration of alternatives requirement. *See also* Dist. Idaho Loc. Civ. R. 7.1(e)(1) (“ . . . if an adverse party fails to timely file any response documents required to be filed under this rule, such failure may be deemed to constitute a consent to the sustaining of said pleading or the granting of said motion or other application.”). Finally, the public policy favoring disposition on the merits is not sufficient to outweigh the four other factors. *See Royse*, 899 F.2d 19 (citing *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130-33 (9th Cir. 1987)).

II. RECOMMENDATION

Based on the foregoing, IT IS HEREBY RECOMMENDED that Plaintiff’s Complaint (Docket No. 1, Att. 2) be DISMISSED for lack of prosecution and that the action be terminated. Relatedly, it is FURTHER RECOMMENDED that Defendants’ Motion to Take Judicial Notice (Docket No. 6) and Motion to Dismiss (Docket No. 7) be DENIED AS MOOT.

Pursuant to District of Idaho Local Civil Rule 72.1(b)(2), a party objecting to a Magistrate Judge’s recommended disposition “must serve and file specific, written objections, not to exceed twenty pages . . . within fourteen (14) days. . . , unless the magistrate or district judge sets a different time period.” Additionally, the other party “may serve and file a response, not to exceed ten pages, to another party’s objections within fourteen (14) days after being served with a copy thereof.”

DATED: August 13, 2012



Honorable Ronald E. Bush
U. S. Magistrate Judge