

APR 15 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LUIS M. CRESCITELLI; RYAN  
CALVO,

Plaintiffs - Appellants,

v.

BANK OF AMERICA, NATIONAL  
ASSOCIATION,

Defendant - Appellee.

No. 12-56920

D.C. No. 8:12-cv-00625-DOC-  
RNB

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
David O. Carter, District Judge, Presiding

Submitted April 10, 2014\*\*  
Pasadena, California

Before: FARRIS and HURWITZ, Circuit Judges, and FRIEDMAN, Senior District  
Judge.\*\*\*

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision  
without oral argument. *See* Fed. R. App. P. 34(a)(2).

\*\*\* The Honorable Paul L. Friedman, Senior District Judge for the U.S.  
District Court for the District of Columbia, sitting by designation.

Luis Crescitelli and Ryan Calbo (Plaintiffs) appeal a district court judgment entered pursuant to Federal Rule of Civil Procedure 41(b) dismissing this diversity action against Bank of America after Plaintiffs failed to meet a court-ordered deadline for filing an amended complaint. We review the dismissal for an abuse of discretion, *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992), and affirm.

After removal, Bank of America filed a motion to dismiss for failure to state a claim. Plaintiffs did not file an opposition to that motion. Rather than grant the motion outright, the district court instead dismissed the complaint without prejudice, giving Plaintiffs leave to file an amended complaint within thirteen days of its order. The order expressly warned that failure to file an amended complaint would result in dismissal with prejudice.

Plaintiffs filed an amended complaint two days after the deadline. The district court therefore did not abuse its discretion in dismissing this action with prejudice for failing to comply with its express order. *See Pagtalunan v. Galaza*, 291 F.3d 639, 642–43 (9th Cir. 2002). Although Plaintiffs claim that a timely filing was submitted and then rejected by the clerk, the district judge correctly noted that the clerk’s record belies that contention.

**AFFIRMED.**