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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Maryelizabeth Aguado, Sheila Pilat,)

No. CV 09-1390-PHX-MHM

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Plaintiffs,)

ORDER

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vs.)

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First Magnus Financial Corporation,))

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JPMorgan Chase Bank, N.A., Mortgage))

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Electronic Registration Systems, Inc.,))

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America's Servicing Company, Deutche))

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Bank National Trust Company, New))

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Century Mortgage Corporation,)

Defendants.

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Defendants JPMorgan Chase Bank, N.A. and Mortgage Electronic Registration

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Systems, Inc. filed a Motion to Dismiss on July 14, 2009 (Dkt.#5) On September 2, 2009,

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the same Defendants filed a Motion for Summary Ruling (Dkt.#13) regarding the Motion to

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Dismiss. As they pointed out, Plaintiffs' Response was due on July 31, 2009. They also

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cited to Local Rule 7.2(i), which provides that when no opposing motion is timely filed,

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“such noncompliance may be deemed a consent to the denial or granting of the motion and

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the court may dispose of the motion summarily.” (Dkt.#13 at 1-2) Defendants requested that

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the Court grant their motion, dismiss the case with prejudice, and award their costs and

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attorneys' fees. (Id.)

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On August 28, 2009, Defendants Wells Fargo Bank, N.A. and Deutche Bank National

Trust Company filed a separate Motion to Dismiss (Dkt.#12). On September 28, 2009, these

1 same Defendants also filed a request for a summary ruling, citing to Local Rule 7.1(i) and
2 emphasizing that the text of this rule makes it clear that the rule also applies “unrepresented
3 part[ies].” (Dkt.#14)

4 On October 23, 2009, the Court ordered Plaintiffs to file a responsive memorandum
5 to Defendants’ Motions to Dismiss no later than November 16, 2009. As of this date, no
6 responsive memorandum has been filed. LRCiv 7.2(i) provides in part if the opposing party
7 “does not serve and file the required answering memorandum, ...such non-compliance may
8 be deemed a consent to the denial or granting of the motion and the Court may dispose of the
9 motion summarily.”

10 “Failure to follow a district court’s local rules is a proper ground for dismissal.”
11 Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) (citing U.S. v. Warren, 601 F.2d 471, 474
12 (9th Cir. 1979)). “Although we construe pleadings liberally in their favor, pro se litigants are
13 bound by the rules of procedure.” Id. at 54 (citing King v. Atiyeh, 814 F.2d 565, 567 (9th
14 Cir. 1987)). “Before dismissing the action, the district court is required to weigh several
15 factors: ‘(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need
16 to manage its docket; (3) the risk of prejudice to the [party seeking dismissal]; (4) the public
17 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
18 sanctions.’” Id. at 53 (quoting Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986)).
19 “The first two of these factors favor the imposition of sanctions in most cases, while the
20 fourth cuts against a default or dismissal sanction. Thus the key factors are prejudice and
21 availability of lesser sanctions.” Wanderer v. Johnston, 910 F.2d 652, 656 (9th Cir. 1990).

22 The dismissal factors in this case are similar to those present in Ghazali. In that case,
23 the Ninth Circuit upheld summary dismissal of a 42 U.S.C. § 1983 action for the failure to
24 follow a Nevada district court local rule. Ghazali, 46 F.3d at 53. The Nevada rule, like
25 Local Rule 7.2(i), considered the failure to file a response to a motion to “constitute a consent
26 to the granting of the motion.” Id. (quoting D. Nev. R. 140-6). The Court reasoned that the
27 dismissal was proper because the pro se plaintiff was bound by the rules of procedure, and
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1 was given notice of the motion and ample time to respond. Id. at 54 (citing King, 814 F.2d
2 at 567).

3 Similarly, Plaintiffs in this case have not responded despite receiving notice of both
4 Defendants' Motion to Dismiss and motions for summary disposition. (Dkt.#13,14) Further,
5 the motions specifically warned that the lack of a timely response may be deemed a consent
6 to the granting of the motion and the Court may dispose of the motion summarily. While the
7 public policy favoring resolution on the merits weighs against dismissal, it is no more
8 compelling here than it was in Ghazali. As noted in Wanderer, the first two
9 factors—expeditious resolution and docket management—generally favor dismissal.
10 Wanderer, 910 F.2d at 656. They weigh especially heavily here because of Plaintiffs' total
11 failure to respond to three dispositive motions. The third and fifth factors that Wanderer
12 emphasized—prejudice and availability of other sanctions—are virtually identical to those
13 present in Ghazali, because that case involved a pro se litigant in exactly the same procedural
14 position as Plaintiff. Thus, under Ghazali, dismissal of Plaintiffs' case under the local rule
15 is justified. Pursuant to LRCiv 7.2(i), the Court deems Plaintiffs' failure to serve and file the
16 required answering memorandum a consent to the granting of the Defendants' Motions to
17 Dismiss. Moreover, given the statute of limitations and standing issues raised by Defendants
18 in their Motions to Dismiss, it appears that granting Plaintiffs leave to amend the Complaint
19 under Federal Rule of Civil Procedure 15(a) would be futile.

20 **Accordingly,**

21 **IT IS HEREBY ORDERED** granting Defendants' Motions to Dismiss. (Dkt.# 5, 12).

22 **IT IS FURTHER ORDERED** dismissing this case with prejudice.

23 **IT IS FURTHER ORDERED** granting Defendants' Motion for Summary Ruling
24 (Dkt.#13) and denying the request for attorneys' fees and costs contained therein without
25 prejudice to Defendants moving, consistent with the Local Rules, for attorneys' fees and
26 costs pursuant to Rule 83.

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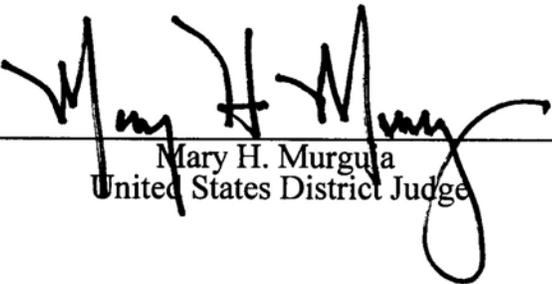
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IT IS FURTHER ORDERED granting Defendants' Motion for Ruling Re: Motion to Dismiss (Dkt.#14).

IT IS FURTHER ORDERED directing the Clerk of Court to close this case.

DATED this 17th day of November, 2009.



Mary H. Murgula
United States District Judge