

1 **WO**

2

3

4

5

6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8

9 Judith M. Jones,

10 Plaintiff,

11 vs.

12

13 American Mortgage Specialist, Inc.;
14 California Reconveyance Company;
15 Mortgage Electronic Registration Systems,
16 Inc.; First American Title; Priority Posting
17 and Publishing,

18 Defendants.

No. CV 09-2229-PHX-JAT

ORDER

18 Pending before the Court are Defendants JPMorgan Chase Bank, N.A., California
19 Reconveyance Company, and Mortgage Electronic Registration Systems, Inc.’s (collectively
20 “the Chase Defendants”) Motion to Dismiss (Doc. # 11); Defendant First American Title
21 Insurance Company’s Partial Joinder (Doc. # 12); Defendant American Mortgage Specialists,
22 Inc.’s Partial Joinder (Doc. # 15); Defendant Priority Posting and Publishing’s Motion to
23 Dismiss (Doc. # 18); the Chase Defendants’ Motion for Summary Disposition under Rule
24 7.2(i); (Doc. # 23); and Defendant American Mortgage Specialists, Inc.’s Motion for
25 Summary Judgment (Doc. # 24). For the reasons that follow, the Court grants the request for
26 summary disposition.

27 Local Rule of Civil Procedure 7.2(i) provides that if an “unrepresented party or
28 counsel does not serve and file the required answering memoranda . . . such non-compliance

1 may be deemed a consent to the . . . granting of the motion and the Court may dispose of the
2 motion summarily.” LRCiv. 7.2(i). Local Rule 7.2(c) requires responsive memoranda to be
3 filed within fourteen days after a motion is served. In this case, motions to dismiss were filed
4 on October 15, 2009, and October 29,2009. A motion for summary disposition was filed on
5 December 28, 2009. Plaintiff has failed to respond to any of the pending motions.

6 “Failure to follow a district court’s local rules is a proper ground for dismissal.”
7 *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (citing *U.S. v. Warren*, 601 F.2d 471, 474
8 (9th Cir. 1979)). Before granting Defendants’ motion for failure to abide by a local rule,
9 however, the Court “is required to weigh several factors: ‘(1) the public’s interest in
10 expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of
11 prejudice to the defendants; (4) the public policy favoring disposition of cases on their
12 merits; and (5) the availability of less drastic sanctions.’” *Ghazali*, 46 F.3d at 53 (quoting
13 *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)). “This ‘test’ is not mechanical.
14 It provides the district court with a way to think about what to do, not a set of conditions
15 precedent for sanctions or a script that the district court must follow.” *Conn. Gen. Life Ins.*
16 *Co. v. New Images of Beverly Hills*, 482 F.3d 1091, 1096 (9th Cir. 2007).

17 Here, the first, second, and third factors all weigh in favor of summarily dismissing
18 this case. The first factor “always favors dismissal,” *Yourish v. California Amplifier*, 191
19 F.3d 983, 990 (9th Cir. 1999), and the second factor usually favors dismissal, *Wanderer v.*
20 *Johnston*, 910 F.2d 652, 656 (9th Cir. 1990), and this case is no exception. In the instant
21 case, the Court finds that the public’s interest in expeditiously resolving this litigation and
22 the Court’s interest in managing the docket weigh in favor of dismissal. Plaintiff has had
23 ample time to respond to Defendants’ motion to dismiss and yet Plaintiff has failed to
24 respond to even a single pending motion. Because the Court and public have a strong interest
25 in judicial efficiency and the prompt resolution of litigation, dismissal under these
26 circumstances is appropriate.

27 With respect to the third factor, the Court finds that Plaintiff’s refusal to respond
28 causes Defendants to suffer prejudice. Defendants have taken timely action to address

1 Plaintiff's claims and reduce the cost and complexity of this litigation, and Plaintiff's refusal
2 to respond, if permitted to continue, would only frustrate those efforts. This is especially true
3 in a case like this, where there are several pending motions, and Plaintiff has failed to
4 respond to even a single motion. Moreover, the third factor also weighs in favor of dismissal
5 in this case, since a presumption of injury arises from the occurrence of unreasonable delay
6 in prosecuting an action. *See Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). It is
7 axiomatic that, as time passes, it becomes harder for Defendants to defend the action as
8 witnesses become unavailable and memories fade. *See Efav v. Williams*, 473 F.3d 1038,
9 1041 (9th Cir. 2007) (passage of time can prejudice a defendant).

10 Although the fourth factor—public policy favoring disposition of cases on their
11 merits—weighs against granting Defendants' motion, the Court finds this factor to be greatly
12 outweighed by the factors in favor of granting the motions.

13 Finally, the Court concludes that the availability of less drastic sanctions does not
14 necessitate that those lesser sanctions be employed in the instant matter. The Court has
15 granted Plaintiff ample time to respond to Defendants' motions, and the Court has explicitly
16 warned Plaintiff that failure to do so could result in granting of such motions (Doc. # 7 at p.
17 3). Plaintiff nonetheless failed to respond or take any other action to prosecute her claims.
18 Therefore, factor 5 weighs in favor of dismissal.

19 With four factors weighing in favor of granting Defendants' motion and only one
20 factor weighing against, the Court finds the granting of Defendants' motion to be appropriate
21 here. The Court's decision is further supported by the fact that the granting of Defendants'
22 motion is premised upon a local rule that expressly permits the Court to summarily grant
23 Defendants' unopposed motions. *United States v. Warren*, 601 F.2d 471, 474 (9th Cir. 1979)
24 (“Only in rare cases will we question the exercise of discretion in connection with the
25 application of local rules.”).

1 The Court thus concludes that granting Defendants' motion to dismiss under LRCiv.
2 7.2(i) is justified and appropriate.¹

3 Accordingly,

4 **IT IS ORDERED** that Defendants JPMorgan Chase Bank, N.A., California
5 Reconveyance Company, and Mortgage Electronic Registration Systems, Inc.'s Motion for
6 Summary Disposition under Rule 7.2(i) (Doc. # 23) is granted.

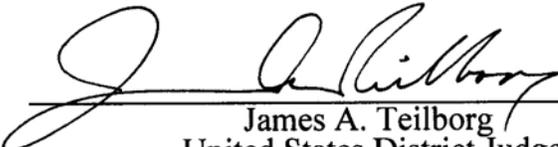
7 **IT IS FURTHER ORDERED** that Defendants JPMorgan Chase Bank, N.A.,
8 California Reconveyance Company, and Mortgage Electronic Registration Systems, Inc.'s
9 Motion to Dismiss (Doc. # 11) is granted.

10 **IT IS FURTHER ORDERED** that Defendant Priority Posting and Publishing's
11 Motion to Dismiss (Doc. # 18) is granted.

12 **IT IS FURTHER ORDERED** that Defendant American Mortgage Specialists, Inc.'s
13 Motion for Summary Judgment (Doc. # 24) is denied as moot.

14 **IT IS FINALLY ORDERED** that the Clerk of the Court shall enter judgment
15 accordingly, and dismiss this case without prejudice.

16 DATED this 19th day of April, 2010.

17
18
19 
20 James A. Teilborg
21 United States District Judge
22
23
24

25 ¹ The Court having analyzed the Chase Defendant's motion for summary disposition,
26 and finding that the remaining Defendants are in the same position, the Court will grant both
27 motions to dismiss under LRCiv. 7.2(i). *See generally Abigninin v. AMVAC Chem. Corp.*,
28 545 F.3d 733, 743 (9th Cir.2008) ("A [d]istrict [c]ourt may properly on its own motion
dismiss an action as to defendants who have not moved to dismiss where such defendants are
in a position similar to that of moving defendants.").