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**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA**

<b>JAMES D. GILBERT,</b>	)	<b>1:13-CV-265 AWI SKO</b>
	)	
<b>Plaintiff,</b>	)	
<b>v.</b>	)	<b>ORDER ON PLAINTIFF’S</b>
	)	<b>MOTION TO CONTINUE</b>
<b>CHASE HOME FINANCE, LLC,</b>	)	<b>HEARING</b>
<b>JPMORGAN CHASE BANK, N.A., and</b>	)	
<b>DOES 1-100 inclusive,</b>	)	
	)	
<b>Defendants.</b>	)	

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On July 23, 2013, the Court vacated a July 29, 2013 hearing on Defendants’ motion to dismiss. The Court noted that Plaintiff had failed to file an opposition and was in violation of the local rules. After the Court signed the order, but before the order was docketed, Plaintiff filed an untimely opposition.

On July 24, 2013, Plaintiff filed a combined motion to continue and leave to file a late opposition, and improperly set that motion for a hearing for July 29, 2013, despite the fact that this date had been vacated and the motion to dismiss had been taken under submission.

Also on July 24, 2013, Defendants filed a reply. As part of the reply, Defendants contend that Plaintiff’s failure to file a timely opposition should be construed as a consent to dismissal.

Plaintiff’s motion to continue will be denied. There is no proper reason to continue the hearing on the motion to dismiss. Further, the Court has reviewed the opposition and the reply, and a hearing on the motion to dismiss remains unnecessary. The Court, however, will consider

1 the opposition and the reply. The consequence of a failure to file a timely opposition is that a  
2 party will not be heard at oral argument; it is not consent to dismissal.

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4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. Plaintiffs' motion to continue is DENIED, but the Court will consider Plaintiff's untimely  
6 opposition;
- 7 2. The July 29, 2013, hearing date remains VACATED as to all motions in this case; and
- 8 3. The Court will issue its decision on Defendants' motion to dismiss on after July 29, 2013.

9 IT IS SO ORDERED.

10 Dated: July 25, 2013



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12 SENIOR DISTRICT JUDGE  
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