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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JUNG MYN PARK, MIN SOOK SUH,

Plaintiffs,

v.

BANK OF AMERICA; BANK OF  
AMERICA, N.A.; BRIAN T.  
MOYNIHAN, DAVID C. DARNELL;  
GARY G. LYNCH; THOMAS K.  
MONTAG and Does 1-XXXX, et  
al.,

Defendants.

No. CIV. S-13-1717 LKK/DAD

**ORDER**

Pending before the court in the above-captioned case is defendants' motion to dismiss, originally scheduled to be heard on October 21, 2013. (ECF No. 7.) Plaintiffs, represented by Pamela J. Palmieri, failed to file a timely opposition or statement of non-opposition, as required by Local Rule 230(c). Accordingly, this court issued an order (i) continuing the hearing on the motion until November 18, 2013; (ii) directing plaintiffs to file an opposition or statement of non-opposition by Monday, October 13, 2013 at 4:30 p.m.; and (iii) ordering counsel for plaintiffs to show cause in writing, no later than

1 October 16, 2013, as to why she should not be sanctioned for her  
2 failure to respond to the motion in a timely manner. (ECF  
3 No. 29.)

4 As plaintiffs failed to file an opposition or a statement of  
5 non-opposition, and counsel for plaintiffs failed to respond to  
6 the order to show cause, the court was prepared to dismiss this  
7 action. However, a review of the docket herein showed that  
8 plaintiffs had timely filed a status conference statement in  
9 anticipation of the Status (Pretrial Scheduling) Conference,  
10 currently set for November 4, 2013 at 2:00 p.m. The court  
11 contacted plaintiffs' counsel and instructed her to immediately  
12 file a response to the order to show cause, lest her clients face  
13 dismissal.

14 The response filed by plaintiffs' counsel (ECF No. 12) may  
15 charitably be described as the lamest received by this court in  
16 some years. Its upshot is that counsel was unaware of the motion  
17 to dismiss because she did not receive a physical copy of  
18 defendants' motion. Such an excuse would carry some weight in  
19 state court. But as Local Rule 135 makes clear, a "Notice of  
20 Electronic Filing" is automatically generated by the court's  
21 electronic case filing system at the time a document is filed,  
22 and "[s]ervice via this electronic Notice constitutes service  
23 pursuant to Fed. R. Civ. P. 5(b)(2)(E)." Plaintiffs' counsel has  
24 registered an email address with the court's electronic case  
25 filing system. She has shown herself to be sufficiently competent  
26 to electronically file both a complaint (ECF No. 1) and a status  
27 report (ECF No. 11). And the fact that she timely filed a status  
28 report demonstrates that she both received and reviewed the

1 court's order setting a status conference herein (ECF No. 5). In  
2 other words, plaintiffs' counsel should have received electronic  
3 notice of the motion to dismiss, and complied with the Local  
4 Rules as to the deadline for filing an opposition or statement of  
5 non-opposition.<sup>1</sup>

6 While the court is strongly inclined to dismiss this action,  
7 it will not do so at this time, solely because it does not wish  
8 to forestall plaintiffs from having their day in court due to  
9 their counsel's errors. Nevertheless, plaintiffs' counsel is now  
10 on notice that she must henceforth diligently review her email  
11 and the electronic docket in this matter, and timely file all  
12 required documents, as the court will accept no further excuses  
13 going forward. Future failures of compliance may lead to  
14 dismissal, monetary sanctions, and/or notice to the State Bar of  
15 California of counsel's failure to competently perform her  
16 professional duties.

17 In light of the foregoing, the court hereby orders as  
18 follows:

19 [1] Counsel for plaintiffs, Pamela J. Palmieri, is  
20 SANCTIONED in the amount of one hundred and fifty dollars  
21 (\$150.00), payable to the Clerk of the Court within fourteen  
22 (14) days of docketing of this order.

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24 <sup>1</sup> The court declines to enter an order, as requested by  
25 plaintiffs' counsel, to the effect that "Defendants serve  
26 Plaintiff with all moving papers at 317 Evelyn Avenue, Roseville  
27 CA 95678." If plaintiffs' counsel wishes to opt for conventional  
28 service, she should review Local Rule 130 and make appropriate  
arrangements. If she wishes technical assistance with the  
electronic case filing system, she may contact the help desk at  
(866) 884-5525.

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[2] The hearing on defendants' motion to dismiss is  
CONTINUED until January 13, 2014 at 10:00 a.m.

[3] Plaintiffs are DIRECTED to file an opposition to the  
motion to dismiss or a statement of non-opposition no later  
than November 18, 2013. Defendants may file any reply no  
later than December 9, 2013.

[4] The status conference herein is CONTINUED until January  
27, 2014 at 2:00 p.m. and status conference reports are due  
fourteen (14) days before that date. Plaintiffs are DIRECTED  
to serve a copy of this order on any further defendants that  
they may serve in this matter.

IT IS SO ORDERED.

DATED: October 18, 2013.



LAWRENCE K. KARLTON  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT