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United States District Court
For the Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ESTEBAN POLONSKI, et al.,

Plaintiffs,

No. C 09-0039 PJH

v.

**ORDER GRANTING MOTION
TO DISMISS**

FEDERAL DEPOSIT INSURANCE
CORPORATION as receiver for
INDYMAC FEDERAL BANK, F.S.B.,
and as conservator for INDYMAC
FEDERAL BANK, F.S.B.,

Defendant.

Before the court is defendant's motion to dismiss the above-entitled action for lack of subject matter jurisdiction. Plaintiffs filed no written opposition to the motion within the time permitted by Civil Local Rule 7-3.

The court finds that the action must be dismissed because plaintiffs failed to exhaust the claims process set forth in 12 U.S.C. § 1821(d)(3) to (13). This claims process is a mandatory prerequisite to judicial review. See id. § 1821(d)(13)(D). During the claims process, the courts do not have jurisdiction over claims against a failed institution for which the FDIC has been appointed receiver. McCarthy v. FDIC, 348 F.3d 1075, 1077 (9th Cir. 2003).

Accordingly, for the reasons argued by the FDIC in its motion to dismiss, the court

1 finds that the motion must be GRANTED. Being without jurisdiction, the court finds it
2 unnecessary to address the motion to dismiss for failure to state a claim, and alternative
3 motion for a more definite statement.

4 The date for the hearing on the motion, previously set for Wednesday, March 18,
5 2009, is VACATED.

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7 **IT IS SO ORDERED.**

8 Dated: March 18, 2009



PHYLLIS J. HAMILTON
United States District Judge

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