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2 UNITED STATES DISTRICT COURT  
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
4 OAKLAND DIVISION

5 ANNA MCCLAIN, an individual,  
6  
7 Plaintiff,  
8 vs.  
9 WELLS FARGO BANK, N.A., et al.,  
10 Defendants.

Case No: C 11-5020 SBA

**ORDER DIRECTING PLAINTIFF  
TO FILE RESPONSE TO  
DEFENDANTS' MOTION TO  
DISMISS**

Dkt. 4

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12 On October 18, 2011, Defendants filed a motion to dismiss. Dkt. 4. The motion is  
13 scheduled for hearing on March 13, 2012. Under Local Rule 7-3, any opposition or  
14 statement of non-opposition was due no later than two weeks after the motion was filed.  
15 As such, Plaintiff's response was due by November 1, 2011. To date, however, no  
16 response to the motion has been filed.

17 "Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss an  
18 action for failure to comply with any order of the court." Ferdik v. Bonzelet 963 F.2d  
19 1258, 1260 (9th Cir. 1992). As such, the failure to file an opposition to a motion to dismiss  
20 in the manner prescribed by the Court's Local Rules is grounds for dismissal. Ghazali v.  
21 Moran, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam). Nevertheless, the Court will sua sponte  
22 afford Plaintiff an additional opportunity to file a response to Defendants' motion to  
23 dismiss. While the Court does not countenance Plaintiff's disregard of the Local Rules, the  
24 Court grants such extension in consideration of less drastic alternatives to dismissal. See  
25 Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002). Nonetheless, Plaintiff is warned  
26 that the failure to file an opposition by the deadline set by the Court will be deemed  
27 grounds for dismissing the action under Rule 41(b), without further notice. Accordingly,  
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IT IS HEREBY ORDERED THAT:

1. Plaintiff shall file her response to Defendants’ motion to dismiss by no later than **February 16, 2012**. If Plaintiff does not intend to prosecute this action, she should file a stipulation for dismissal under Rule 41(b), a request for dismissal under Rule 41(a), or a statement of non-opposition, by that deadline. The failure timely comply with this Order will result in the dismissal of the action. If applicable, Defendants may file a reply by no later than **February 23, 2012**.

2. Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court, in its discretion, may resolve the motion without oral argument, prior to the new hearing date. The parties are advised to check the Court’s website to determine whether a court appearance is required.

IT IS SO ORDERED.

Dated: February 2, 2012

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 MCCLAIN et al,

5 Plaintiff,

6 v.

7 WELLS FARGO BANK, N.A. et al,

8 Defendant.

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9 Case Number: CV11-05020 SBA

10 **CERTIFICATE OF SERVICE**

11  
12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
13 Court, Northern District of California.

14 That on February 2, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said  
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing  
16 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
17 located in the Clerk's office.

18 Anna McClain  
19 1968 Marques Avenue  
20 San Jose, CA 95125

21 Dated: February 2, 2012

Richard W. Wieking, Clerk

22 By: LISA R CLARK, Deputy Clerk  
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