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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

THOMAS B. HUNTINGTON III, et
al.

Plaintiffs,

v.

NATIONAL CITY MORTGAGE, et
al.,

Defendants.

CASE No. 09-CV- 1155 W (WMc)

**ORDER GRANTING
DEFENDANT’S MOTION TO
DISMISS WITH PREJUDICE
(DOC. 31)**

Pending before the Court is Defendant Wells Fargo Bank, N.A.’s motion to dismiss the First Amended Complaint (“FAC”). (Doc. 31.) Plaintiffs have failed to oppose.¹

Civil Local Rule 7.1(f.3.c) provides that “[i]f an opposing party fails to file papers in the manner required by Local Rule 7.1(e)(2), that failure may constitute a consent to the granting of that motion or other ruling by the court.” The Ninth Circuit has held that a district court may properly grant a motion to dismiss for failure to respond. See generally Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam) (affirming dismissal for

¹This is not Plaintiffs’ first failure to oppose a motion to dismiss. Rather than respond to Defendant GMAC Mortgage’s motion to dismiss, Plaintiffs filed the FAC, thereby mooting the motion. Plaintiffs and GMAC then filed a joint motion to dismiss GMAC. (*See Jt. Mt.* [Doc. 21].) In response to Defendant National City Mortgage’s motion to dismiss the FAC. Plaintiffs filed a voluntary dismissal of National City. (*See Not. of Dism.* [Doc. 27].)

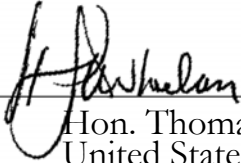
1 failure to file timely opposition papers where plaintiff had notice of the motion and ample
2 time to respond).

3 Here, based on the hearing date, Plaintiffs' opposition was due on or before April
4 19, 2010. Plaintiffs, however, did not file an opposition and have not requested additional
5 time to do so. Moreover, there is no evidence before the Court that Defendant's moving
6 papers failed to reach the mailing address designated in Defendant's Proof of Service or
7 that Plaintiffs were not aware of the pending motion. Relying on Civil Local Rule
8 7.1(f.3.c), the Court deems Plaintiffs' failure to oppose Defendant's motion as consent to
9 the merits.

10 Furthermore, because Plaintiffs have repeatedly failed to oppose the motions to
11 dismiss, two of which specifically challenged the FAC, the Court finds leave to amend is
12 not warranted. Accordingly, Defendant Wells Fargo's motion to dismiss (Doc. 31) is
13 **GRANTED WITHOUT LEAVE TO AMEND**, and **JUDGMENT** shall be entered
14 in favor of Defendants.²

15 **IT IS SO ORDERED.**

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17 DATED: May 6, 2010

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19 _____
20 Hon. Thomas J. Whelan
21 United States District Judge
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²Although Cal-Western Reconveyance Corporation is identified as a defendant, none of
the causes of action were asserted against it.