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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

FELIX R. MARISTELA, et al.,  
  
Plaintiffs,  
  
v.  
  
PARAMOUNT REALTY AND  
FINANCIAL, et al.,  
  
Defendants.

CASE NO. 09-CV-2856 W (BLM)

**ORDER:**

**(1) GRANTING DEFENDANTS' MOTION TO EXPUNGE LIS PENDENS [DOC. 15], AND**

**(2) GRANTING DEFENDANTS' MOTION FOR ATTORNEY'S FEES [DOC. 15]**

On January 31, 2011, the Court dismissed this case with prejudice. On February 1, 2011, Defendants PNC Bank, National Association, doing business as PNC Mortgage, and as successor by merger to National City Bank, formerly doing business as National City Mortgage, and PNC Financial Service Group filed a motion to expunge the lis pendens and a motion for attorney's fees. Plaintiffs Felix R. Maristela and Salome E. Maristela have not opposed.

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

1 to the granting of that motion or other ruling by the court.” The Ninth Circuit has held  
2 that a district court may properly grant a motion to dismiss for failure to respond. See  
3 generally Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam) (affirming  
4 dismissal for failure to file timely opposition papers where plaintiff had notice of the  
5 motion and ample time to respond).

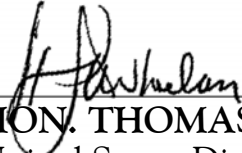
6 In this case, based on the March 28, 2011 hearing date, Plaintiffs’ opposition was  
7 due on or before March 14, 2011. Plaintiffs, however, did not file an opposition by this  
8 date and have not requested additional time to do so. Moreover, there is no evidence  
9 before the Court that Defendants’ moving papers failed to reach the mailing address  
10 designated in Defendants’ Proof of Service or that Plaintiffs were not aware of the  
11 pending motion. Relying on Civil Local Rule 7.1(f.3.c), the Court deems Plaintiffs’  
12 failure to oppose Defendants’ motions as consent to granting the motions.

13 In light of the foregoing, the Court:

- 14 1. **EXPUNGES** the lis pendens recorded in connection with this action as  
15 San Diego County Recorder’s Office Document No. 2009-0702424 (Doc.  
16 15), and
- 17 2. **GRANTS** Defendants’ motion for attorney’s fees and **AWARDS**  
18 **\$760.00** in attorney’s fees (Doc. 15).

19  
20 **IT IS SO ORDERED.**

21  
22 **DATE: March 30, 2011**

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25 **HON. THOMAS J. WHELAN**  
26 United States District Judge  
27 Southern District of California  
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