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

VEGAS DIAMOND PROPERTIES,
LLC, a Nevada Limited Liability
Company; and JOHNSON
INVESTMENTS, LLC, a Nevada Limited
Liability Company,

Plaintiffs,

vs.

LA JOLLA BANK, FSB, a California
Corporation; ACTION FORECLOSURE
SERVICES, INC., a California
Corporation; FEDERAL DEPOSIT
INSURANCE CORPORATION, as
Receiver for La Jolla Bank; OMAR
BENJAMIN WIGGINS, an individual;
RICK HALL, an individual; MARTIN
RODRIGUEZ, an individual; FRANK
WARREN, an individual; R. W.
LOVELESS, an individual; LYNN HEIN,
an individual; and DOES I-X, inclusive,

Defendants.

CASE NO. 10cv1205-WQH-BGS
ORDER

HAYES, Judge:

The matter before the Court is the Motion to Dismiss filed by Defendant Frank Warren.
(ECF No. 100).

BACKGROUND

On July 14, 2011, Plaintiffs filed a First Amended Complaint. (ECF No. 94).

On August 18, 2011, Defendant Frank Warren filed a Motion to Dismiss the Complaint
pursuant to Federal Rule of Civil Procedure 12(b)(6). (ECF No. 100). Defendant Warren

1 contends that Plaintiffs' claims are barred by the applicable statute of limitations; there is no
2 contractual relationship alleged between Plaintiffs and Defendant Warren; Plaintiffs fail to
3 allege facts to support any duty of care or disclosure between Plaintiffs and Defendant Warren;
4 Plaintiffs fail to allege claims of fraud and deceit with the requisite particularity; and the
5 allegations of the Complaint are insufficient to show liability for misconduct by Defendant
6 Warren. *Id.*

7 On September 8, 2011, Plaintiffs and Defendant Warren filed Joint Motion for
8 Continuance of the Hearing Date on Defendant Warren's Motion to Dismiss, requesting a one-
9 month extension of time for Plaintiffs to respond to the Motion to Dismiss. (ECF No. 104).
10 On September 12, 2011, the Court granted the parties' Joint Motion, continuing the hearing
11 date to October 17, 2011. (ECF No. 106). To date, no response has been filed by Plaintiffs.

12 DISCUSSION

13 A district court may properly grant an unopposed motion pursuant to a local rule where
14 the local rule permits, but does not require, the granting of a motion for failure to respond. *See*
15 *Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995). Civil Local Rule 7.1 provides: "If an
16 opposing party fails to file the papers in the manner required by Civil Local Rule 7.1.e.2, that
17 failure may constitute a consent to the granting of a motion or other request for ruling by the
18 court." S.D. Cal. Civ. Local Rule 7.1.f.3.a. "Although there is ... a [public] policy favoring
19 disposition on the merits, it is the responsibility of the moving party to move towards that
20 disposition at a reasonable pace, and to refrain from dilatory and evasive tactics." *In re Eisen*,
21 31 F.3d 1447, 1454 (9th Cir. 1994) (affirming grant of motion to dismiss for failure to
22 prosecute); *see also Steel v. City of San Diego*, No. 09cv1743, 2009 WL 3715257, at *1 (S.D.
23 Cal., Nov. 5, 2009) (dismissing action pursuant to Local Rule 7.1 for plaintiff's failure to
24 respond to a motion to dismiss).


25 The Motion to Dismiss contains a proof of service stating that Plaintiffs were served
26 with the Motion to Dismiss on August 18, 2011. (ECF No. 100-4). Pursuant to the September
27 12, 2011 Order, the hearing for the Motion to Dismiss was noticed for October 17, 2011. (ECF
28 No. 106). Civil Local Rule 7.1 provides: "each party opposing a motion ... must file that

1 opposition ... with the clerk ... not later than fourteen (14) calendar days prior to the noticed
2 hearing.” S.D. Cal. Civ. Local Rule 7.1(e)(2). As of the date of this Order, Plaintiffs have
3 failed to file an opposition. The Court concludes that “the public’s interest in expeditious
4 resolution of litigation,” “the court’s need to manage its docket,” and “the risk of prejudice to
5 the defendant” weigh in favor of granting the Motion to Dismiss for failure to file an
6 opposition. *Ghazali*, 46 F.3d at 53.

7
8 **CONCLUSION**

9 **IT IS HEREBY ORDERED** that the Motion to Dismiss is **GRANTED**. (ECF No. 100).
10 The Complaint is **DISMISSED** without prejudice as to Defendant Frank Warren.

11 **DATED:** December 14, 2011

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WILLIAM Q. HAYES
United States District Judge