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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOSE DIAZ and TERESA DIAZ,)	Civil No. 11cv2530 L (BLM)
)	
Plaintiffs,)	ORDER GRANTING JPMORGAN
)	CHASE BANK, N.A.’S MOTION TO
v.)	DISMISS [doc. #5]
)	
JP MORGAN CHASE BANK)	
NATIONAL, <i>et al.</i> ,)	
)	
Defendants.)	

On March 5, 2012, defendant JPMorgan Chase Bank N.A. filed a motion to dismiss the complaint for failure to state a claim upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(1). *See* Civ. L.R. 7.1.e.2. The motion is set for hearing on April 23, 2012. Under the Civil Local Rules, plaintiffs’ opposition to defendant’s motion was due on or before April 9, 2012. *See* Civ. L.R. 7.1.e.2. But plaintiffs have not opposed the motion nor have they sought additional time in which to respond to the motion to dismiss.

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." When an opposing party receives notice under Federal Rule of Civil Procedure 5(b) and is given sufficient time to respond to a motion to dismiss, the Court may grant the motion based on failure to comply with a local rule. *See generally Ghazali v. Moran*, 46 F.3d 52, 52 (9th Cir. 1995) (per curiam) (affirming dismissal for failure to file

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

2 Here, plaintiffs were properly served with defendant's motion, which was filed on March
3 5, 2012, and therefore they had five weeks to oppose the motion. Because the motion to dismiss
4 is unopposed, and relying on Civil Local Rule 7.1(f.3.c), the Court deems plaintiffs' failure to
5 oppose defendant's motion as consent to granting it.


6 The Court notes that the only other defendant that has been served, the FDIC, was
7 dismissed on January 3, 2012. [doc. #4]. Because the time for service of process on the other
8 named defendants has past and no extension of time for service has been requested, the Court
9 will dismiss the Complaint in its entirety.

10 Based on the foregoing, **IT IS ORDERED:**

- 11 1. Defendant JPMorgan Chase Bank N.A.'s motion to dismiss plaintiffs' complaint is
12 **GRANTED;**
- 13 2. The unserved named defendants are **DISMISSED;**
- 14 3. The Clerk of the Court is directed to **CLOSE** this case.

15 **IT IS SO ORDERED.**

16 DATED: April 16, 2012

17 
18 M. James Lorenz
19 United States District Court Judge

20 COPY TO:

21 HON. BARBARA L. MAJOR
22 UNITED STATES MAGISTRATE JUDGE

23 ALL PARTIES/COUNSEL
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