

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF CALIFORNIA
8

9 KANCHANA KARUNARATNE;
10 CARLA KARUNARATNE,
11
12 Plaintiffs,
13 v.
14 US BANK NATIONAL ASSOCIATION,
15 et al.,
16 Defendants.

Case No.: 17-CV-2115-JLS (KSC)

**ORDER GRANTING UNOPPOSED
MOTION TO DISMISS**

(ECF No. 10)

16 Presently before the Court is Defendants U.S. Bank National Association, Ocwen
17 Loan Servicing, LLC Inc., and Western Progressive, LLC’s Motion to Dismiss, (ECF No.
18 10). No opposition to the Motion has been filed.

19 The Ninth Circuit has held that pursuant to a local rule a district court may properly
20 grant a motion to dismiss for failure to respond. *See generally Ghazali v. Moran*, 46 F.3d
21 52, 53 (9th Cir. 1995) (affirming dismissal for failure to file timely opposition papers where
22 plaintiff had notice of the motion and ample time to respond). Here, a local rule does allow
23 the Court to grant the Motion: Civil Local Rule 7.1.f.3.c. provides “[i]f an opposing party
24 fails to file [an opposition] in the manner required by Civil Local Rule 7.1.e.2, that failure
25 may constitute a consent to the granting of a motion or other request for ruling by the
26 court.” An opposition must be filed 14 days prior to the noticed hearing. Civ. L. R. 7.1.e.2.
27 The hearing for the present Motion was set for January 11, 2018 at 1:30 p.m., thus any
28 opposition was due on December 28, 2017.

1 In determining whether to dismiss an action, the court is required to weigh several
2 factors: “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need
3 to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
4 favoring disposition of cases on their merits; and (5) the availability of less drastic
5 sanctions.” *Ghazali*, 46 F.3d at 53 (quoting *Henderson v. Duncan*, 779 F.2d 1421, 1423
6 (9th Cir. 1986)). The Ninth Circuit has recognized that the first and fourth factors cut in
7 opposite directions. *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999) (first
8 factor always weighs in favor of dismissal); *Hernandez v. City of El Monte*, 138 F.3d 393,
9 401 (9th Cir. 1998) (fourth factor always weighs against dismissal). Therefore, the Court
10 considers the substance of factors two, three, and five.

11 Here, the second factor weighs in favor of dismissal. The Court must manage its
12 docket to ensure the efficient provision of justice. Plaintiffs had notice of the Motion yet
13 failed to file a timely opposition. Plaintiffs have not provided any excuse for their failure
14 to timely file an opposition to the present Motion. The Court cannot continue waiting for
15 Plaintiffs to take action, and a case cannot move forward when Plaintiffs fail to defend their
16 case. Plaintiffs are also represented by an attorney and have filed to comply with the rules
17 of procedure. *See also Holt v. I.R.S.*, 231 Fed. App’x. 557, 558 (9th Cir. 2007) (holding
18 court did not abuse its discretion in dismissing action for failure to file an opposition and
19 rejecting plaintiff’s contention that the district court should have warned her of the
20 consequences of failing to file an opposition).

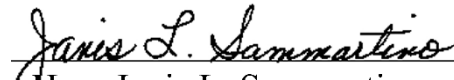
21 As to the third factor, the Court finds no risk of prejudice to Defendants if it
22 dismisses Defendants from this matter. In fact, Defendants have requested the dismissal.
23 This factor weighs in favor of dismissal. As for the fifth factor, where the plaintiff does
24 not oppose dismissal it is “unnecessary for the Court to consider less drastic alternatives.”
25 *Rodriguez v. Nationstar Mortg. LLC*, No. 2:16–CV–5962–ODW(SK), 2016 WL 4581402,
26 at *1 (C.D. Cal. Sept. 1, 2016). Still, the Court did employ the less drastic alternative of
27 giving notice to the Parties that no opposition had been filed. On January 4, 2018, the
28 Court filed an Order vacating the hearing on the Motion and taking the matter under

1 submission. (ECF No. 15.) In that Order, the Court noted that no opposition had been
2 filed. (*Id.*) Still, Plaintiffs filed no opposition. This factor therefore weighs in favor of
3 dismissal.

4 Finding that the *Ghazali* factors weigh in favor of granting Defendant's Motion to
5 Dismiss as unopposed, the Court **GRANTS** Defendant's Motion and **DISMISSES**
6 **WITHOUT PREJUDICE** Plaintiffs' claims against Defendants. Plaintiffs may file an
7 amended complaint, if any, within thirty (30) days from the date this Order is electronically
8 docketed.

9 **IT IS SO ORDERED.**

10 Dated: February 6, 2018

11 
12 Hon. Janis L. Sammartino
13 United States District Judge
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28