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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 JEFF SIKKING; and BARBARA  
12 SIKKING,  
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14 Plaintiffs,  
15 v.  
16 RICHARDSON GRISWOLD; SAN  
17 DIEGO CITY ATTORNEY'S; and  
18 CODE ENFORCEMENT,  
19 Defendants.

Case No.: 18cv634-MMA (JMA)

**ORDER: (1) GRANTING  
DEFENDANT'S UNOPPOSED  
MOTION TO DISMISS; AND (2)  
DENYING PLAINTIFF'S MOTION  
FOR A PRELIMINARY  
INJUNCTION**

[Doc. Nos. 2, 13]

19 Plaintiffs Jeff and Barbara Sikking filed this action against Defendants Richardson  
20 Griswold and the San Diego City Attorney's & Code seeking an injunction "halt[ing the  
21 Receiver from] any sale of [Plaintiffs'] property [located at 4814 Auburn Dr., San Diego,  
22 CA]." See Doc. No. 1 at 7. Plaintiffs also filed a motion for an injunction seeking the  
23 same relief. See Doc. No. 2. On May 14, 2018, Defendant Richardson Griswold, the  
24 court appointed Receiver, filed a motion to dismiss Plaintiffs' Complaint pursuant to  
25 Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) on the grounds that he is immune  
26 from this lawsuit, the court should abstain under the *Younger* doctrine, the Court lacks  
27 subject matter jurisdiction, and because Defendant was sued in his individual capacity  
28 and not as a receiver. Doc. No. 13. The Court set the motion for hearing on June 18,

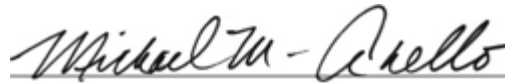
1 2018, meaning that Plaintiffs were required to file a response in opposition on or before  
2 June 4, 2018. *See* Civ. L.R. 7.1.e.2 (stating that “each party opposing a motion . . . must  
3 file that opposition or statement of non-opposition . . . not later than fourteen (14)  
4 *calendar* days prior to the noticed hearing”). Plaintiffs did not file an opposition brief or  
5 a statement of non-opposition in response to Defendant’s motion to dismiss. *See* Docket.  
6 On June 11, 2018, the Court took Defendant Griswold’s motion to dismiss under  
7 submission. Doc. No. 15. In response, Plaintiffs filed a motion, which the Court  
8 construed as a motion for an extension of time to file a response in opposition to  
9 Defendant’s motion to dismiss. Doc. No. 17. Accordingly, the Court ordered Plaintiffs  
10 to file a response in opposition to Defendant Griswold’s motion to dismiss on or before  
11 July 9, 2018. Doc. No. 18. The Court specifically warned Plaintiffs that “[*p*]ro se status  
12 does not excuse a litigant from full participation in litigation. Like all litigants, *pro se*  
13 litigants are bound by and expected to comply with the local rules of this District and the  
14 Federal Rules of Civil Procedure.” *Id.* at 2. The Court further warned that failure to  
15 oppose a motion to dismiss permits the Court to grant the motion as unopposed. *Id.*  
16 Despite the warning, Plaintiffs have not filed an opposition brief or a statement in non-  
17 opposition in response to Defendant’s motion to dismiss. *See* Docket. Based on  
18 Plaintiffs’ failure to oppose the motion, Defendant Griswold requests the Court grant his  
19 motion. *See* Doc. No. 19.

20         The Ninth Circuit has held that a district court may grant an unopposed motion to  
21 dismiss where a local rule permits, but does not require it to do so. *See generally,*  
22 *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Here, Civil Local Rule 7.1.f.3.c  
23 provides, “[i]f an opposing party fails to file the papers in the manner required by Civil  
24 Local Rule 7.1.e.2, that failure may constitute a consent to the granting of a motion or  
25 other request for ruling by the court.” As such, the Court has the option of granting  
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1 Defendant's motion on the basis of Plaintiffs' failure to oppose.<sup>1</sup> Generally, public  
2 policy favors disposition of cases on their merits. *See Hernandez v. City of El Monte*,  
3 138 F.3d 393, 399 (9th Cir. 1998). However, a case cannot move forward toward  
4 resolution on the merits when the plaintiffs fail to defend their complaint against a Rule  
5 12 motion. Accordingly, the Court **GRANTS** Defendant's unopposed motion to dismiss,  
6 and **DISMISSES** Plaintiffs' claims as to Defendant Richardson Griswold without  
7 prejudice.<sup>2</sup> The Clerk of Court is instructed to terminate this action as to Defendant  
8 Richardson Griswold.

9 **IT IS SO ORDERED.**

10 Dated: July 24, 2018

  
11 Hon. Michael M. Anello  
12 United States District Judge  
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26 <sup>1</sup> Also, Plaintiffs' failure to comply with the provisions of Civil Local Rule 7.1.e.2 constitutes a failure  
27 to comply with the provisions of this Court's Local Rules, which serves as an additional basis for  
28 dismissal under Civil Local Rule 41.1.b.

<sup>2</sup> Because Plaintiffs' motion for injunctive relief seeks only to stop the receiver from selling the  
property, the Court also **DENIES** Plaintiffs' motion for an injunction. *See* Doc. No. 2.