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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 ORLANDO GARCIA,

12 Plaintiff,

13 v.

14 SOULDRIVER, L.P., a Delaware Limited
15 Partnership; SOULDRIVER LESSEE,
16 INC., a Delaware Corporation; and Does
1-10,

17 Defendants.

Case No.: 21-CV-82 TWR (MSB)

**ORDER VACATING HEARING AND
GRANTING UNOPPOSED MOTION
TO DISMISS**

(ECF No. 5)

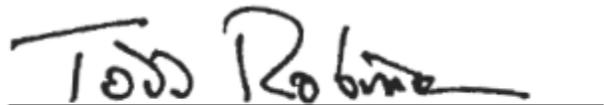
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19 On October 30, 2020, Plaintiff Orlando Garcia filed this action against Defendants
20 Souldrider, L.P. and Souldrider Lessee, Inc. in the Superior Court of California, County of
21 San Diego. (*See* ECF No. 1-1.) On January 15, 2021, Defendants removed, (*see* ECF No.
22 1), and on March 3, 2021, Defendants filed the instant Motion to Dismiss pursuant to
23 Federal Rule of Civil Procedure 12(b)(6). (“Mot.,” ECF No. 5). The Court set the Motion
24 for hearing on June 9, 2021. Pursuant to the undersigned’s Standing Order for Civil Cases,
25 Plaintiff was required to file a response in opposition to the Motion on or before May 12,
26 2021. *See also* S.D. Cal. Civ. L.R. 7.1.e.2 (stating that “each party opposing a motion . . .
27 must file that opposition or statement of non-opposition . . . not later than fourteen (14)
28 calendar days prior to the noticed hearing”). Plaintiff has not yet filed an opposition brief

1 or statement of non-opposition in response to Defendants' Motion. (*See* Docket.)

2 The Ninth Circuit has held that a district court may grant an unopposed motion to
3 dismiss where a local rule permits but does not require it to do so. *See generally, Ghazali*
4 *v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Here, Civil Local Rule 7.1.f.3.c provides, “[i]f
5 an opposing party fails to file the papers in the manner required by [the relevant] Civil
6 Local Rule[s], that failure may constitute a consent to the granting of a motion or other
7 request for ruling by the court.” As such, the Court has the option of granting Defendants’
8 Motion on the basis of Plaintiff’s failure to oppose. Generally, public policy favors
9 disposition of cases on their merits. *See Hernandez v. City of El Monte*, 138 F.3d 393, 399
10 (9th Cir. 1998). However, a case cannot move towards resolution on the merits when the
11 plaintiff fails to defend his or her complaint against a Rule 12 motion. Accordingly, the
12 Court **VACATES** the hearing set for June 9, 2021, **GRANTS** Defendants’ unopposed
13 Motion to Dismiss, and **DISMISSES WITHOUT PREJUDICE** Plaintiff’s Complaint.

14 **IT IS SO ORDERED.**

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16 Dated: June 4, 2021

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18 Honorable Todd W. Robinson
19 United States District Court
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