

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JARELL SHABAZZ MARTIN,)
)
Plaintiff,)
vs.)
)
DOMINO’S PIZZA.)
)
Defendant.)
)

Case No.: 2:22-cv-00784-GMN-DJA

ORDER

Before the Court are Plaintiff Jarell Shabazz Martin’s Responses, (ECF Nos. 47, 48), to the Court’s Order to Show Cause, (ECF No. 46).

Also pending before the Court is the Renewed Motion to Compel Arbitration and Dismiss or Stay Proceeding, (ECF No. 29), filed by Defendant Domino’s Pizza. Plaintiff filed a Response, (ECF No. 31), to which Defendant filed a Reply, (ECF No. 36). Plaintiff then filed another Response, (ECF No. 38), which the Court construes as a Sur-Reply filed without leave of Court.

Also pending before the Court is Defendant’s Motion for Order to Show Cause, (ECF No. 28). Plaintiff filed a Response, (ECF No. 30), to which Defendant filed a Reply, (ECF No. 35). Plaintiff then filed another Response, (ECF No. 39), which the Court construes as a Sur-Reply filed without leave of Court. (ECF No. 38).

Also pending before the Court are Defendant’s Motions to Strike, (ECF Nos. 40, 41), Plaintiff’s Sur-Replies, (ECF Nos. 38, 39).

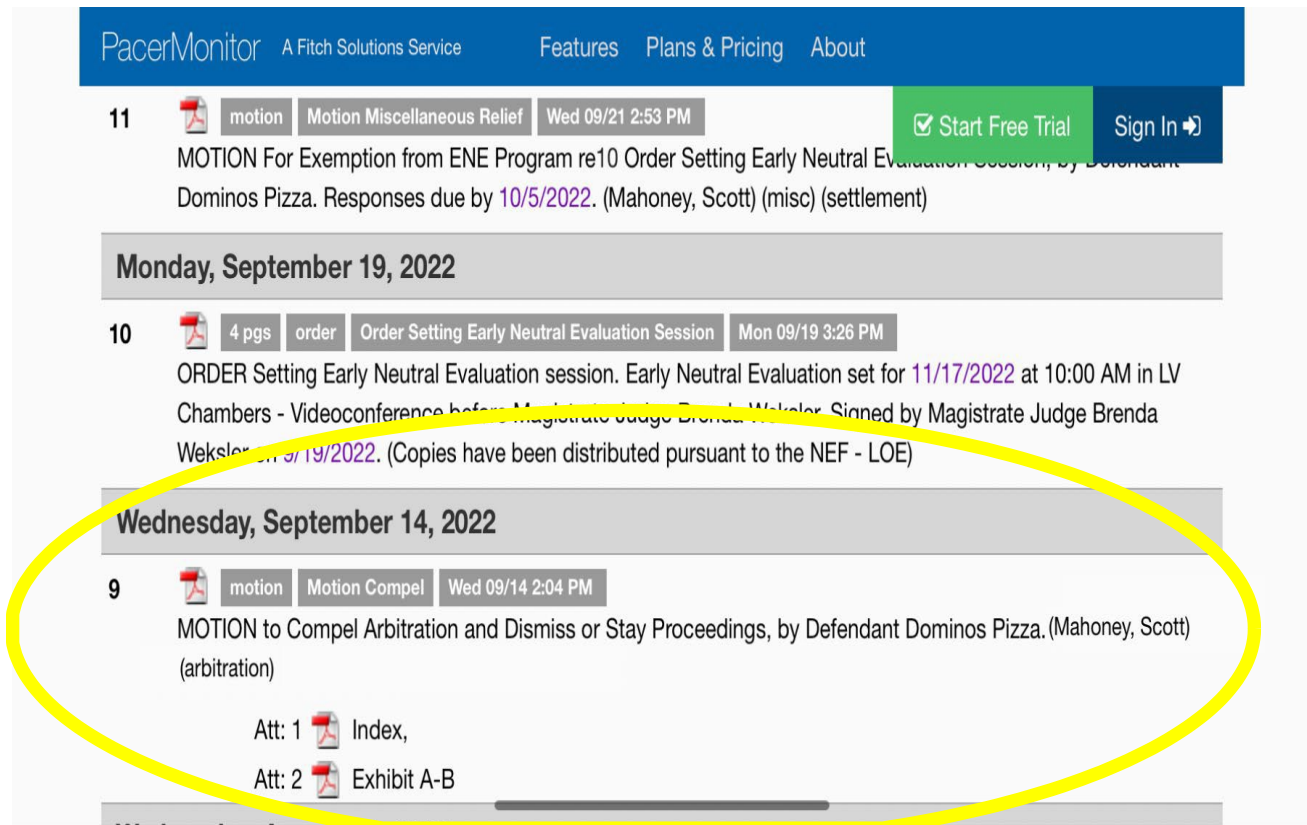
For the reasons discussed below, the Court DISMISSES Plaintiff’s Complaint with prejudice pursuant to its inherent powers because Plaintiff repeatedly submitted falsified evidence to the Court and offered misrepresentations in furtherance of his position when given

1 the opportunity to explain his conduct. The Court also GRANTS Defendant's Motions to
2 Strike because Plaintiff's Sur-Replies were filed without leave of Court and there are neither
3 exceptional nor extraordinary circumstances warranting a sur-reply. Additionally, the Court
4 DENIES as moot Defendant's Motion for Order to Show Cause, (ECF No. 28), because the
5 Court independently issued its own Order to Show Cause, (ECF No. 46).

6 **I. BACKGROUND**

7 This case arises from Defendant's alleged discrimination against Plaintiff based on his
8 race and color in violation of Title VII of the Civil Rights Act of 1964. (*See generally* Compl.,
9 ECF No. 1). Early on in the proceedings, Defendant moved to compel arbitration and dismiss
10 or stay proceedings, (ECF No. 9), contending that Plaintiff's claims were governed by the
11 Domino's Pizza Arbitration Agreement Plaintiff signed when Defendant hired him. (Mot.
12 Compel Arbitration & Dismiss or Stay Proceedings, ECF No. 9). The Case
13 Management/Electronic Case Filing ("CM/ECF") system stated that Plaintiff had until
14 September 28, 2022, to respond to Defendant's Motion to Compel Arbitration and Dismiss or
15 Stay Proceedings. (*Id.*). By February 8, 2023, Plaintiff had yet to file a response, resulting in
16 the Court granting Defendant's Motion to Compel Arbitration and Dismiss or Stay Proceedings
17 as unopposed under Local Rule 7-2(d).

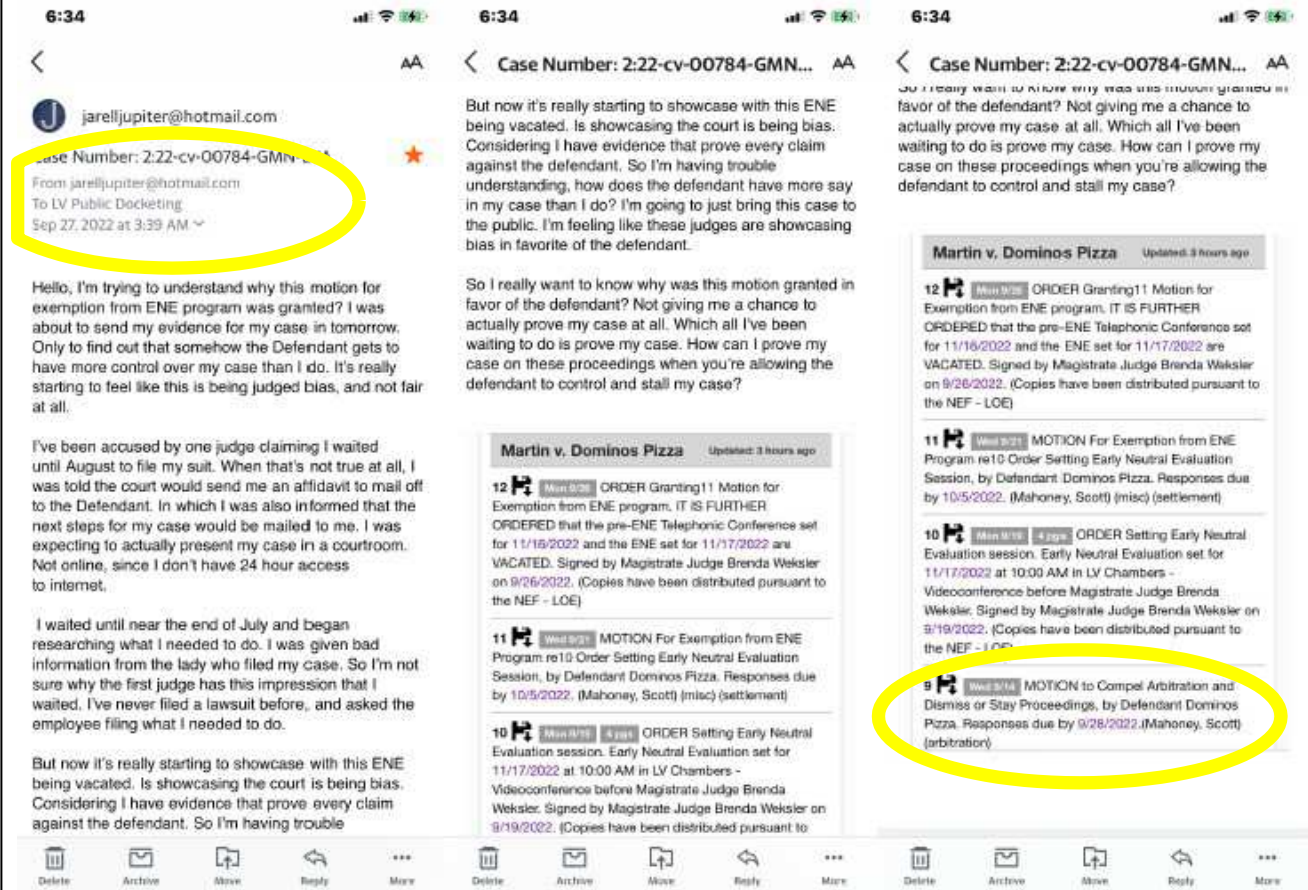
18 Plaintiff then filed a Motion to Reconsider, explaining that he relies on the Public
19 Access to Court Electronic Records ("PACER") system to view case filings and docket
20 information. (Mot. Reconsider 1:13-28, ECF No. 14). Plaintiff alleged that, unlike CM/ECF,
21 PACER did not provide a response deadline for Defendant's Motion to Compel Arbitration and
22 Dismiss or Stay Proceedings. (*Id.*). Plaintiff provided a screenshot from PACER in his Reply
23 which initially appeared to corroborate his argument: In the screenshot, shown below, the entry
24 of Defendant's Motion Compel Arbitration and Dismiss or Stay Proceedings, located at ECF
25 No. 9, does not include a response deadline. (Reply 2:7-28, ECF No. 22).



(Reply 2:7–28). Based on Plaintiff’s representations and the screenshot he submitted in his Reply, the Court granted Plaintiff’s Motion to Reconsider, and gave Defendant leave to re-file its Motion to Compel Arbitration and Dismiss or Stay Proceedings so that Plaintiff would have an opportunity to respond. (Order, ECF No. 25). Defendant then filed its Renewed Motion to Compel Arbitration and Dismiss or Stay Proceedings, (ECF No. 29).

Defendant also filed a Motion for Order to Show Cause, (ECF No. 29), contending that Plaintiff manipulated the screenshot above by deleting the response deadline generated by PACER. (Mot. Order Show Cause, ECF No. 28). The Court subsequently examined Plaintiff’s filings and observed that Plaintiff’s screenshots included portions of his email exchange with Las Vegas Public Docketing about a collateral matter—his exemption from the Early Neutral Evaluation (ENE) with the Magistrate Judge. (Mot. Reconsider 1:21–23). The screenshots Plaintiff submitted in his email to Las Vegas Docketing unlike the screenshots Plaintiff submitted in his Reply to the Court, did display a response deadline. This evidence confirmed

1 that, contrary to Plaintiff's assertions, PACER had generated a response deadline for
2 Defendant's Motion to Compel Arbitration and Dismiss or Stay Proceedings. This comparison
3 also revealed that Plaintiff had apparently submitted a fraudulently manipulated image as
4 evidence to this Court in his Reply.



19 (Docket Screenshots, Ex. B to Mot. Reconsider, ECF No. 14). These screenshots directly
20 contradicted Plaintiff's explanation and evidence.¹

21 The Court issued an Order to Show Cause² expressing its doubts about the veracity of
22 Plaintiff's representations and requiring Plaintiff to explain the inconsistency between the

24 ¹ The Court separately contacted Las Vegas Public Docketing and obtained Plaintiff's September 27 email. This
25 email again showed that PACER had generated a September 28, 2022, response deadline.

² The Court also required Plaintiff to sign his response to the Court's Order to Show Cause in accordance with
Fed. R. Civ. P. 11(a). (Order Show Cause 3:6, ECF No. 46). Plaintiff signed neither of his Responses. (Resp.,
ECF Nos. 47, 49).

1 screenshots in his email to Las Vegas Public Docketing displayed at ECF No. 14 and the
2 version he filed in his Reply at ECF No. 22. (Order Show Cause (“OSC”) 3:4–6, ECF No. 46).
3 The Order warned Plaintiff that failure to offer a good faith explanation for his conduct could
4 result in the Court granting Defendant’s Renewed Motion to Compel Arbitration and Dismiss
5 or Stay Proceedings. (*Id.* 3:1–4). In Response, Plaintiff accused the Court of bias. Specifically,
6 Plaintiff averred that PACER did not generate a response deadline to Defendant’s Motion to
7 Compel Arbitration and Dismiss or Stay Proceedings until after he filed his Motion for
8 Reconsideration. (Resp. OSC 5:16–18, ECF No. 47). According to Plaintiff, “this raises
9 concerns that the Court, which has control over its own PACER monitor, may have edited the
10 document.” (*Id.*). Notably, the screenshots were not from the Judiciary’s PACER system.
11 Rather, the PACER Monitor system Plaintiff used is produced by Fitch Solutions, a data
12 aggregating company. *See About Fitch Solutions*, FITCH SOLUTIONS,
13 <https://www.fitchsolutions.com/about-fitch-solutions> (last visited November 8, 2023).

14 Plaintiff’s screenshot of the email with Las Vegas Public Docketing provided in his
15 Response also conflicts with the screenshot he previously provided to the Court. Although the
16 screenshot is of the same email exchange previously provided in ECF No. 14, which had
17 contained the response deadline, the response deadline is now missing. Compare the
18 screenshot Plaintiff re-attached to his Response to the Court’s Order to Show Cause on the left
19 with the screenshot he submitted in his Motion to Reconsider on the right:

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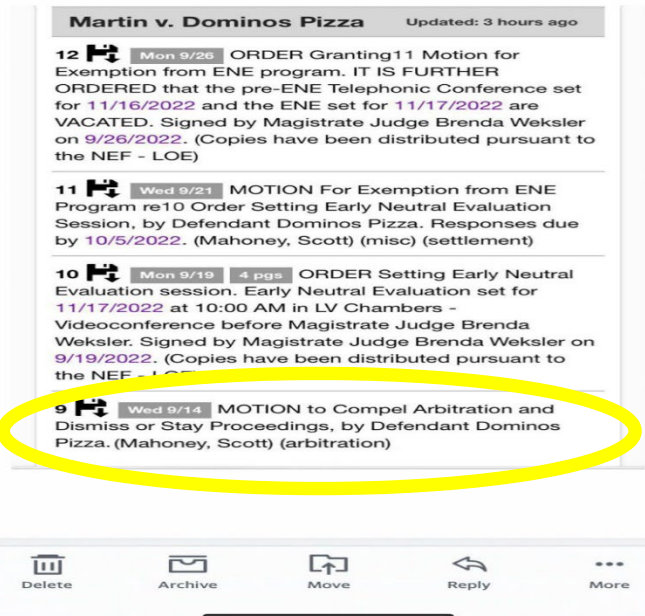
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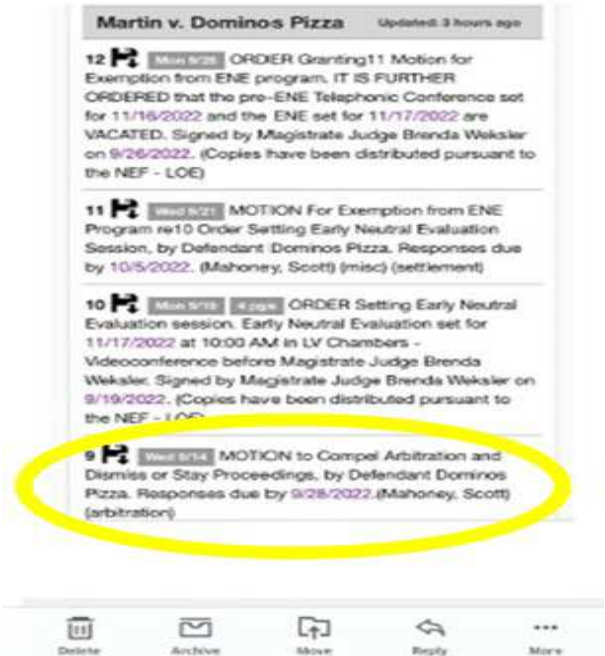
Do I really want to know why was this motion granted in favor of the defendant? Not giving me a chance to actually prove my case at all. Which all I've been waiting to do is prove my case. How can I prove my case on these proceedings when you're allowing the defendant to control and stall my case?



6:34

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Do I really want to know why was this motion granted in favor of the defendant? Not giving me a chance to actually prove my case at all. Which all I've been waiting to do is prove my case. How can I prove my case on these proceedings when you're allowing the defendant to control and stall my case?



(Email Screenshot, Ex. A to Resp. OSC, ECF No. 47); (Docket Screenshots, Ex. B to Mot. Reconsider, ECF No. 14). The Court now addresses whether Plaintiff falsified evidence and offered misrepresentations to the Court below.

II. LEGAL STANDARD

District courts have inherent power to sanction a party for improper conduct. *Fink v. Gomez*, 239 F.3d 989, 991 (9th Cir. 2001). A court may issue sanctions under its inherent power only upon finding “bad faith or conduct tantamount to bad faith.” *Id.* at 994. Bad faith, or conduct tantamount to bad faith, encompasses “a variety of types of willful actions, including recklessness when combined with an additional factor such as frivolousness, harassment, or an improper purpose.” *Id.* Upon a finding of bad faith, the decision to issue

1 sanctions is within the court’s discretion. *Air Separation, Inc. v. Underwriters at Lloyd’s of*
2 *London*, 45 F.3d 288, 291 (9th Cir. 1995).

3 One possible sanction within a court’s discretion is to dismiss the claims asserted by the
4 bad-faith actor. *See, e.g., Leon v. IDX Systems Corp.*, 464 F.3d 951 (9th Cir. 2006) (dismissing
5 the plaintiff’s claims because he willfully spoliated evidence); *Anheuser-Busch, Inc. v. Nat.*
6 *Beverage Distribs.*, 69 F.3d 337, 348 (9th Cir. 1995) (finding that dismissal is appropriate where
7 a “pattern of deception and discovery abuse made it impossible” to proceed with the action).
8 Dismissal is warranted when “a party has engaged deliberately in deceptive practices that
9 undermine the integrity of judicial proceedings.” *Anheuser–Busch*, 69 F.3d at 348.

10 Dismissal is also appropriate when the sanctionable conduct is willful or done in bad
11 faith. *Id.* “Dismissal is particularly warranted where one party submits falsified evidence”
12 because the “submission of falsified evidence substantially prejudices an opposing party by
13 casting doubt on the veracity of all the culpable party’s submissions throughout [the] litigation.”
14 *Pope v. Fed. Express Corp.*, 138 F.R.D. 675, 683 (W.D. Mo. 1990) (*aff’d in part, vacated on*
15 *other grounds*, 974 F.2d 982 (8th Cir. 1992)). Additionally, when a party submits falsified
16 evidence, the “prejudiced party is forced either to attempt independent corroboration of each
17 submission, at considerable expense of time and money, or to accept the real possibility that
18 those discovery documents submitted by the opposing party are inaccurate.” *Id.* Moreover,
19 excluding the fabricated evidence is not always enough to deter discovery misconduct because
20 “[l]itigants would infer that they have everything to gain, and nothing to lose, if manufactured
21 evidence merely is excluded while their lawsuit continues.” *Id.*

22 When determining whether dismissal is an appropriate sanction, courts consider several
23 factors: (1) the public’s interest in-expeditious resolution of litigation; (2) the court’s need to
24 manage its dockets; (3) the risk of prejudice to the party seeking the sanctions; (4) the public
25

1 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
2 sanctions. *Henry v. Gill Indus., Inc.*, 983 F.2d 943, 948 (9th Cir. 1993).

3 **III. DISCUSSION**

4 Having reviewed Plaintiff’s filings and exhibits, the Court finds that Plaintiff twice
5 submitted falsified evidence to the Court and offered misrepresentations in furtherance of his
6 position when given the opportunity to explain his actions, and that this conduct was willful
7 and in bad faith. Plaintiff failed to offer a reasonable explanation for his conduct, instead
8 accusing the Court of fabricating evidence and colluding with Defendant. (*See generally* Resp.
9 OSC). Plaintiff’s accusations ignore the fact that the Court’s Order to Show Cause was based
10 on filings and evidence he submitted *himself*. (*Id.*) Plaintiff’s email and the screenshots of the
11 same exchange in his Motion to Reconsider showed PACER generated a September 28, 2022,
12 deadline for the Motion to Compel Arbitration and Dismiss or Stay Proceedings. That is,
13 *Plaintiff* exposed the fallacy undergirding his own position. And when confronted with this
14 contradiction, Plaintiff filed additional manipulated screenshots and misrepresentations in
15 furtherance of his position. In short, Plaintiff acted willfully and intentionally altered evidence
16 to deceive the Court and avoid arbitration.

17 The Court must now consider whether Plaintiff’s conduct—fabricating evidence and
18 repeating misrepresentations—warrants dismissal. The Court considers the relevant factors
19 below and concludes that the harsh sanction of dismissal is warranted in this instance.³

21 ³ Courts should “impose sanctions only ‘after affording an opportunity to be heard.’” *Paladin Assocs., Inc. v.*
22 *Montana Power Co.*, 328 F.3d 1145, 1164 (9th Cir. 2003). But the opportunity to be heard does not necessarily
23 entitle the subject of a motion to an evidentiary hearing. *In re Reed*, 888 F.3d 930, 938 (8th Cir. 2018) (quoting
24 *Schlaifer Nance & Co. v. Estate of Warhol*, 194 F.3d 323, 335 (2d Cir. 1999) (internal citation omitted)). The
25 Ninth Circuit has made clear that “the opportunity to submit briefs” satisfies the “opportunity to be heard”
requirement. *See Paladin*, 328 F.3d 1145 at 1164–65 (holding that, because the Rule 37 sanctions issues to be
resolved were such that an evidentiary hearing would not have aided the [decision-making] process, district court
did not abuse its discretion by ruling on the briefing). Here, the Court provided Plaintiff the opportunity to
submit a written brief, and finds an evidentiary hearing is not necessary because the record clearly establishes
that he submitted falsified evidence and made repeated misrepresentations throughout his filings.

1 **A. The Public’s Interest in Expeditious Resolution of Litigation**

2 The public’s interest in expeditious resolution of litigation always favors dismissal.
3 *Nourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 2002). This is because the public has an
4 overriding interest in securing “the just, speedy, and inexpensive determination of every
5 action.” *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1227 (9th Cir.
6 2006); *see* Fed. R. Civ. P. 1. Here, Plaintiff’s conduct caused considerable delay in this case.
7 Plaintiff’s actions led to additional motion practice, requiring both Defendant and the Court to
8 review his falsified evidence and misrepresentations throughout these proceedings. *See Lee v.*
9 *Trees, Inc.*, No. 3:15-cv-0165, 2017 WL 5147146, at *6 (D. Or. Nov. 6, 2017). Plaintiff also
10 filed additional baseless motions and improper sur-replies based on his sanctionable conduct
11 which “has further consumed some of the [C]ourt’s time that could have been devoted to other
12 cases on the docket.” *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002).

13 **A. The Court’s Need to Manage its Docket**

14 Plaintiff’s actions “have impeded the Court’s ability to manage its dockets by obscuring
15 the truth” and consuming more than his share of judicial time and resources. *See Huntley v.*
16 *City of Carlin*, No. 3:12-cv-00664, 2014 WL 4064027, at *5 (D. Nev. Aug. 15, 2014); *see also*
17 *Lee*, 2017 WL 5147146, at *6 (finding the plaintiff’s “deceptive conduct wasted the time and
18 resources of the court” thereby impeding the court’s ability to manage its docket). The
19 integrity of the judicial process must be protected, and the Court’s ability to effectively manage
20 its own docket must be preserved. Accordingly, this factor also weighs in favor of imposing
21 sanctions.

22 **B. The Risk of Prejudice to the Party Seeking Sanctions**

23 This third factor, risk of prejudice to the defendant, also weighs in favor of dismissal. A
24 defendant is prejudiced if the plaintiff’s actions impair the defendant’s ability to go to trial or
25 threaten to interfere with the rightful decision of the case. *Adriana Int’l. Corp. v. Thoeren*, 913
F.2d 1406, 1412 (9th Cir. 1990). “Falsified evidence substantially prejudices an opposing party

1 by casting doubt on the veracity of all of the culpable party's submissions throughout
2 litigation" because it hinders the ability of the Court to have confidence in any of its decisions.
3 *Juarez*, 2016 WL 3660613 at *5 (quoting *Garcia v. Berkshire Life Ins. Co. of Am.*, 569 F.3d
4 1174, 1180 (10th Cir. 2009).

5 Plaintiff's fabrication of evidence to avoid arbitration interferes with the rightful
6 decision of what venue this case is adjudicated in, and the ultimate decision of this case. The
7 Court vacated its Order granting Defendant's Motion to Compel Arbitration because it trusted
8 the veracity of Plaintiff's filings. But since this vacatur, Plaintiff has submitted Motions and
9 filings with altered screenshots and unsupported arguments. Plaintiff's pattern of offering
10 misrepresentations "without 'any sign of repentance or any indication that this pattern of
11 behavior would cease if the case were allowed to proceed'" raises serious concerns that he
12 would further interfere with the rightful decision of this case if allowed to proceed. *Buford v.*
13 *Vang*, No. 1:00-cv-06496, 2006 WL 2652220, at *15 (E.D. Cal. Sept. 15, 2006) (quoting *Sun*
14 *World, Inc. v. Lizarazu Olivarría*, 144 F.R.D. 384, 391 (E.D. Cal. 1992). Accordingly, this
15 factor also weighs in favor of dismissal.

16 **C. The Public Policy Favoring Disposition on the Merits**

17 As for the fourth factor, the public policy favoring disposition of a case on the merits,
18 dismissal of Plaintiff's claims at this stage would not support "the public policy favoring
19 disposition of cases on their merits[.]" *In re Phenylpropanolamine*, 460 F.3d at 1226.
20 Nonetheless, the Ninth Circuit has "recognized that this factor 'lends little support' to a party
21 whose responsibility it is to move a case toward disposition on the merits but whose conduct
22 impedes in that direction." *Id.* at 1228. It is Plaintiff's responsibility to move his case toward
23 disposition on the merits, yet his conduct has only obfuscated the truth and delayed these
24 proceedings. In sum, while this factor favors disposition on the merits, this factor alone "is
25 insufficient to outweigh the other four factors," especially when considering Plaintiff's

1 egregious conduct. *Pringle v. Adams*, No. 10-cv-1556, 2012 WL 1103939, at *10 (C.D. Cal.
2 Mar. 30, 2012).

3 **D. Availability of Less Drastic Sanctions**

4 The fifth factor considers “whether the court explicitly discussed alternative sanctions,
5 whether it tried them, and whether it warned the recalcitrant party about the possibility of
6 dismissal [I]t is not always necessary for the court to impose less serious sanctions first, or
7 to give any explicit warning.” *Valley Eng’rs Inc.*, 158 F.3d at 1057.

8 Here, the Court warned Plaintiff that his misconduct could result in serious
9 consequences, including dismissal. (*See generally* OSC). Despite this warning, Plaintiff
10 submitted additional fabricated evidence and repeated the same misrepresentations from
11 previous filings. *See Juarez*, 2016 WL 3660613 at *6 (determining dismissal was warranted
12 where the plaintiff’s “submission of false evidence [was] not an isolated incident”). The Court
13 finds that less drastic sanctions, including monetary sanctions, would not be useful here
14 because Plaintiff “willfully deceived the Court and engaged in conduct utterly inconsistent with
15 the orderly administration of justice.” *Anheuser-Busch*, 69 F.3d at 348. Plaintiff’s pattern of
16 deception casts doubt on any subsequent arguments and evidence he may provide. *See*
17 *Anheuser–Busch, Inc.*, 69 F.3d at 352 (noting past deception will “likely mean it will be
18 impossible for the court to conduct another trial with any reasonable assurance that the truth
19 would be available” and rejecting lesser sanctions “where the court anticipates continued
20 deceptive misconduct”). “Any lesser sanction would suggest to future litigants that they may
21 manufacture evidence and suffer no meaningful consequences if caught, because they would
22 still be able to maintain a claim or defense against the opposing party—a message equivalent to
23 the ‘no harm, no foul’ adage.” *Lee*, 2017 WL 5147146, at *8.

24 The Court is mindful of the strong public policy which favors disposition of cases on the
25 merits. But the Court finds that a less severe sanction is not appropriate here. Plaintiff received

1 an adverse ruling on Defendant’s Motion to Compel Arbitration and Dismiss or Stay
2 Proceeding and instead of acknowledging he missed the response deadline, he submitted
3 falsified evidence to deceive the Court into vacating its Order.⁴ When given the opportunity to
4 explain his actions, Plaintiff submitted additional falsified evidence and offered more
5 misrepresentations. Under these circumstances, the Court is unable to conclude dismissal is not
6 warranted. Accordingly, the Court DISMISSES Plaintiff’s Complaint with prejudice.

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21 ⁴ Even if Plaintiff was telling the truth and PACER did not generate a response deadline, Local Rule (“LR”) 12-
22 1(a)(2) establishes that “responses to pretrial motions and notices must be filed and served within 14 days from
23 the date of service of the motion.” Thus, Plaintiff’s Response to Defendant’s Motion to Compel Arbitration and
24 Dismiss or Stay Proceeding was always due by September 28, 2022, regardless of whether PACER generated a
25 response deadline. It is Plaintiff’s responsibility to comply with this Court’s Local Rules and manage deadlines.
See, e.g. Briones v. Riviera Hotel & Casino, 116 F.3d 379, 382 (9th Cir. 1997) (“Pro se litigants are not excused
from following court rules[.]”). Nevertheless, the Court recognizes that mistakes happen, and deadlines are
missed. If Plaintiff merely acknowledged that he failed to comply with the deadline set by PACER and this
Court’s Local Rules, the Court would have been amenable to reconsideration, as demonstrated by its Order
granting Plaintiff’s Motion to Reconsider. Instead, Plaintiff opted to falsify evidence and repeatedly offer
misrepresentations to obfuscate the truth. The Court cannot excuse this conduct.

1 **IV. CONCLUSION**

2 **IT IS HEREBY ORDERED** that Plaintiff's Complaint, (ECF No. 1), is **DISMISSED**
3 **with prejudice.**

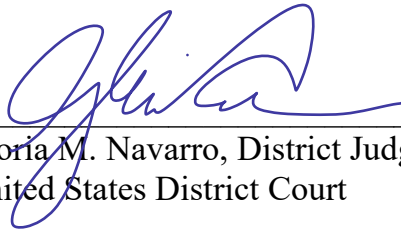
4 **IT IS HEREBY ORDERED** that Defendant's Renewed Motion to Compel Arbitration,
5 (ECF No. 29), is **DENIED as moot.**

6 **IT IS FURTHER ORDERED** that Defendant's Motion for Order to Show Cause, (ECF
7 No. 28) is **DENIED as moot.**

8 **IT IS FURTHER ORDERED** that Defendant's Motions to Strike, (ECF Nos. 40, 41),
9 are **GRANTED.**

10 The Clerk of Court is instructed to close the case and enter judgment accordingly.
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12 **DATED** this 9 day of November, 2023.

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16 Gloria M. Navarro, District Judge
17 United States District Court
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