

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 28 2024

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FERNANDO GASTELUM,

Plaintiff-Appellant,

v.

KPK HOSPITALITY LLC, an IGH Hotel,
DBA Holiday Inn Express Colton - Riverside
North,

Defendant-Appellee.

No. 22-55821

D.C. No. 5:21-cv-01510-JGB-KK

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Jesus G. Bernal, District Judge, Presiding

Submitted March 26, 2024**

Before: TASHIMA, SILVERMAN, and KOH, Circuit Judges.

Fernando Gastelum appeals pro se from the district court's judgment dismissing his action alleging violations of the Americans with Disabilities Act ("ADA") and state law. We have jurisdiction under 28 U.S.C. § 1291. We review

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

for an abuse of discretion a district court's dismissal on the basis of its local rules. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). We affirm.

The district court did not abuse its discretion by dismissing Gastelum's action because Gastelum failed to respond timely to defendants' motion to dismiss the second amended complaint after Gastelum had previously failed to respond timely to defendant's motion to dismiss the original complaint. *See* C.D. Cal. R. 7-12 ("The failure to file any required document, or the failure to file it within the deadline, may be deemed consent to the granting or denial of the motion"); *Ghazali*, 46 F.3d at 53-54 (discussing factors to be considered before dismissing a case for failure to follow local rules).

The district court did not abuse its discretion by denying Gastelum's motion to set aside the dismissal order because Gastelum failed to demonstrate any basis for relief. *See Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (setting forth standard of review and factors for reconsideration).

In ruling on defendant's motion to dismiss Gastelum's first amended complaint, the district court properly declined supplemental jurisdiction over Gastelum's state law claim but should have dismissed that claim without prejudice. *See Wade v. Reg'l Credit Ass'n*, 87 F.3d 1098, 1101 (9th Cir. 1996) ("Where a district court dismisses a federal claim, leaving only state claims for resolution, it

should decline jurisdiction over the state claims and dismiss them without prejudice.”). We affirm the dismissal of the state law claim but instruct the district court to amend the May 5, 2022 order to reflect that the dismissal of Gastelum’s state law claim is without prejudice.

AFFIRMED with instructions to amend the dismissal order.