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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Derek Jahn Chabrowski,  
10 Plaintiff,

11 v.

12 Włodzimierz Jan Litwin; and Roman  
13 Mozdyniewicz,  
14 Defendants.

No. CV-16-03766-PHX-DLR

**ORDER**

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16 A Rule 16 scheduling conference in this matter is set for August 18, 2017 at 9:00  
17 a.m. (Doc. 65.) Counsel for Defendant Litwin has filed a motion to appear  
18 telephonically because he is based in Utah. (Doc. 67.) The motion is granted.

19 Also pending before the Court is Defendant Mozdyniewicz's motion to dismiss  
20 filed on June 21, 2017. (Doc. 61.) No response has been filed, and the time for filing one  
21 has passed. *See* LRCiv 7.2(c) (providing for a 14-day response time). Pursuant to Local  
22 Rule 7.2(i), the Court will deem Plaintiff Chabrowski's failure to respond a consent to the  
23 granting of the motion. *See also Ghazali v. Moran*, 46 F.3d 53, 53 (9th Cir. 1995)  
24 ("Failure to follow a district court's local rules is a proper ground for dismissal.").

25 Dismissal is appropriate on the merits as well. The amended complaint asserts  
26 claims for civil liability and equitable remedies for false filing with the Arizona  
27 Corporation Commission (ACC) under A.R.S. § 29-858. (Doc. 28 ¶¶ 79-95). The  
28 articles of organization for ARTBE LLC listed Chabrowski as the member and Litwin as

1 the manager. (Doc. 25 at 8.) Chabrowski alleges that Litwin made unauthorized filings  
2 with the ACC including articles of termination falsely declaring that company assets had  
3 been properly collected and distributed to members. (Doc. 28 ¶ 27.) Chabrowski claims  
4 that company assets, including the vehicles identified in the complaint, were never  
5 collected and distributed as Litwin declared and he therefore has violated § 29-858 by  
6 filing a materially false document with the ACC. (¶¶ 80-88).

7 But the complaint nowhere alleges that Mozdyniewicz made a false filing with the  
8 ACC. Instead, it asserts only that Mozdyniewicz has been “operating in connection with  
9 Litwin” to export and sell assets of the company. (¶¶ 32, 41 89.) But such conduct, even  
10 if true, does not constitute a violation of § 29-858. Stated otherwise, Chabrowski has  
11 failed to allege sufficient facts to state a plausible claim to relief against Mozdyniewicz  
12 under § 29-858. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The motion  
13 to dismiss therefore is granted.

14 Litwin also has filed a motion to dismiss for failure to state a claim for relief.  
15 (Doc. 66.) Chabrowski has filed a motion for leave to file objections to that motion and  
16 the request to appear telephonically. (Doc. 68.) But leave of Court is not needed to file a  
17 timely response to a motion. Rather, motion practice in this District is governed by the  
18 Local Rules of Civil Procedure, particularly Local Rule 7.2. The request for leave of  
19 Court is denied as moot, but the Clerk is directed to file the lodged “objections” (Docs.  
20 69, 70) as responses to the respective motions. *See* LRCiv 7.2(c).<sup>1</sup>

21 **IT IS ORDERED:**

- 22 1. Defendant Mozdyniewicz’s motion to dismiss (Doc. 61) is **GRANTED**.
- 23 2. Defendant Litwin’s motion to appear telephonically at the Rule 16  
24 scheduling conference (Doc. 67) is **GRANTED**.
- 25 3. Plaintiff Chabrowski’s motion for leave to file objections (Doc. 68) is

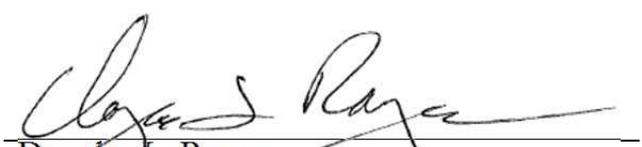
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27 <sup>1</sup> The Court has prohibited Chabrowski from filing any motion for sanctions  
28 absent leave of Court and has ordered him not to file documents unrelated to a  
substantive motion or not authorized by a specific rule of procedure (Docs. 53, 60), but  
these rulings do not prohibit Chabrowski from appropriately responding to motions as  
permitted under the rules of procedure.

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**DENIED.** The Clerk is directed to file the lodged documents (Docs. 69, 70) as responses to the respective motions.

Dated this 16th day of August, 2017.

  
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Douglas L. Rayes  
United States District Judge