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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

Edward G. Lesofski,  
Plaintiff,  
v.  
Jarrod Lash, individually and in his official  
capacity as an Instructor at Arizona School of  
Acupuncture & Oriental Medicine, et al.,  
Defendants.

CV 11-840 TUC DCB

**ORDER**

On December 27, 2011, Plaintiff filed the Complaint, alleging Defendants failed to comply with non-discrimination laws, the American with Disabilities Act and the Rehabilitation Act, by failing to accommodate his disability. He also asserted fraud claims against the Defendant alleging they falsely held themselves out to comply with these laws. On June 25, 2013, the Court dismissed Plaintiff’s claim for bullying and claims against the Commission under the ADA and RA. (Order (Doc. 104)). On September 12, 2013, the Court granted summary judgment for Defendant Lightener, ordered Plaintiff to refile the Second Amended Complaint (Order (Doc. 124)), and on November 1, 2013, the Court granted Plaintiff an extension of time and reset the case management deadlines for the case: discovery due 11/30/2013; dispositive motions due 12/31/2013, and the Proposed Pretrial Order due January 31, 2014, (Order (Doc. 141)). On December 5, 2013, the Plaintiff filed a Notice he had accepted an offer of settlement from Defendant Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM). The case remained as to Defendants Jarrod Lash, Susan Wagner, David Eply and the Arizona School of Acupuncture & Oriental

1 Medicine, the ASAOM Defendants.<sup>1</sup> On July 10, 2014, the ASAOM Defendants filed a  
2 Motion for Summary Judgment.

3 Defendants make the following arguments for summary judgment: 1) upon  
4 Plaintiff's application and admission to the school, the only accommodation requested and  
5 granted was for his service dog to accompany him at school; 2) November 2011, Plaintiff  
6 asked for and was granted test-taking accommodations, but failed to take his exams and  
7 failed his courses; 3) Plaintiff cannot establish a *prima facie* case under the ADA or the RA.  
8 Defendants assert the Plaintiff cannot establish he is disabled as defined under the ADA  
9 because he presents only evidence of a diagnosis for panic disorder without agoraphobia and  
10 adjustment disorder with depressed mood, but fails to present evidence of how this disorder  
11 substantially limits one or more major life activities. Because Defendants agreed to his  
12 requested accommodation for test-taking, and he nevertheless failed to take his tests and  
13 failed his classes, he cannot show he is qualified with or without an accommodation. (MSJ  
14 (Doc. 168)).

15 All of these are well grounded reasons for granting summary judgment for  
16 Defendant.<sup>2</sup> Plaintiff has failed to file a Response.

17 Under Rule 7.2(i) of this Court's Local Rules of Practice (LRCiv), a failure to file  
18 a responsive pleading may be deemed consent to the motion and this Court may dispose of  
19 the motion summarily.<sup>3</sup> "A motion for summary judgment cannot be granted simply because  
20 the opposing party violated a local rule." *Marshall v. Gates*, 44 F.3d 722, 725 (9<sup>th</sup> Cir. 1995)

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22 <sup>1</sup>On November 19, 2011, this Court denied the Defendants' Motion to Dismiss for  
23 Plaintiff's lack of prosecution due to failing to engage in discovery, and gave the Plaintiff 7  
24 days to respond to discovery requests and reset the discovery deadlines.

25 <sup>2</sup> Even though an automatic stay is in place for Defendant Wagner, the Court grants  
summary judgment for all Defendants, including Defendant Wagner.

26 <sup>3</sup>Dismissal is proper where party fails to follow a district court's local rules. *United*  
27 *States v. Warren*, 601 F.2d 471, 474 (9<sup>th</sup> Cir. 1979).

1 (citing *Henry v. Gill Industries Inc.*, 983 F.2d 943, 950 (9<sup>th</sup> Cir. 1993). This is so because a  
2 party may oppose a motion for summary judgment without offering affidavits or any other  
3 materials in support of its opposition. ““Summary judgment may be resisted and must be  
4 denied on no other grounds than that the movant has failed to meet its burden of  
5 demonstrating the absence of triable issues.”” *Id.* at 106 (quoting *Henry*, 983 F.2d at 950).

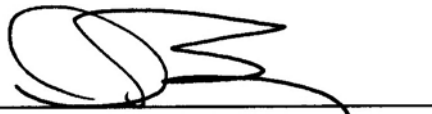
6 Here the Court has reviewed the Complaint and considered the merits of the motion  
7 and the case. In light of these considerations, the Court finds that summarily granting the  
8 motion is warranted, pursuant to Rule 7.2(i).

9 Accordingly,

10 **IT IS ORDERED** that Defendants’ Motion for Summary Judgement (Doc. 168) is  
11 summarily granted, pursuant to LRCiv. 7.2(i).

12 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment  
13 accordingly.

14 DATED this 29<sup>th</sup> day of September, 2014.

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18 David C. Bury  
19 United States District Judge  
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