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NO JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAMOON J. NAVARCHI,)	Case No. CV 15-08474 DDP (JEMx)
)	
Plaintiff,)	ORDER GRANTING MOTION TO STRIKE
)	WITHOUT PREJUDICE
v.)	
)	[Dkt. No. 6]
AFNI, INC.,)	
)	
Defendant.)	
_____)	

Presently before the Court is Defendant AFNI, Inc.'s Motion to Strike. (Dkt. No. 6.) The Motion was unopposed. Defendant has filed a Notice of Non-Receipt of Opposition, requesting this Court grant the Motion on the basis of Plaintiff's failure to oppose the motion. (Dkt. No. 9.)

Noticed motions require the other parties in the case to file either (a) a brief in opposition to the motion or (b) a written statement of nonopposition. C.D. Cal. R. 7-9 (Opposing Papers). Local Rule 7-12 states that "[t]he failure to file any required document . . . may be deemed consent to the granting or denial of the motion." C.D. Cal. R. 7-12 (Failure to File Required Documents).

1 Under Ninth Circuit precedent, a district court may dismiss a
2 case for failing to follow local rules, such as failing to file an
3 opposition. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995)
4 (per curiam). The court must weigh five factors: "(1) the public's
5 interest in expeditious resolution of litigation; (2) the court's
6 need to manage its docket; (3) the risk of prejudice to the
7 defendants; (4) the public policy favoring disposition of cases on
8 their merits; and (5) the availability of less drastic sanctions."
9 Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986) (affirming
10 a dismissal for lack of prosecution); see also Ghazali, 46 F.3d at
11 53 (applying the factors from Henderson to a dismissal for failure
12 to oppose the government's motion to dismiss); Torabi v. Wash. Mut.
13 Bank, No. 3:09-cv-2838-JAH, 2012 WL 259832 (S.D. Cal. Jan. 27,
14 2012) (granting unopposed motions to strike and dismiss).

15 Here, Defendant has filed a Motion to Strike the Complaint
16 under Federal Rule of Civil Procedure 12(f). Defendant argues that
17 the Court must strike the complaint because Plaintiff's state law
18 causes of action are preempted by the federal Fair Credit Reporting
19 Act ("FCRA"). (Def. Mot. Strike at 2.) Defendant concedes that
20 leave can be given to the plaintiff to amend the complaint and
21 state a claim under the FCRA instead. (Id. at 4.)

22 Considering factors one and two from Henderson, the public has
23 a strong interest in expeditious resolution of litigation and the
24 Court needs to be able to control its docket. The Local Rules
25 require opposition or nonopposition papers to be filed in order to
26 effectuate these goals. The parties' papers assist the Court in
27 determining which issues in a case are disputed and what are the
28

1 legal and factual supporting arguments for each side. Thus,
2 failure to file either required paper weighs in favor of dismissal.

3 The third factor is examined in relation "to the strength of
4 the Plaintiff's excuse for the default." Stewart v. City & Cnty.
5 of San Francisco, No. C 08-5434 SBA, 2009 WL 1331101, at *2 (N.D.
6 Cal. May 13, 2009) (citing Yourish v. Cal. Amplifier, 191 F.3d 983,
7 991 (9th Cir. 1999)). Plaintiff has offered no excuse for the
8 failure to oppose Defendant's motion, particularly after Defendant
9 filed a notice of nonopposition warning Plaintiff that Defendant
10 was seeking dismissal of the action for failure to respond. (See
11 Dkt. No. 9.) Thus, the third factor weighs in favor of dismissal.

12 Factor four weighs against dismissal as it favors disposition
13 of cases on the merits. See Pagtalunan v. Galaza, 291 F.3d 639,
14 643 (9th Cir. 2002).

15 Factor five asks the Court to consider alternatives to
16 dismissal. Here, because dismissal will be granted without
17 prejudice and with leave to amend the complaint, the Court finds
18 that this is not a drastic measure requiring an alternative means
19 be used first to secure compliance.

20 Therefore, the Court GRANTS Plaintiff thirty days leave to
21 amend the complaint from the date of this Order. If Plaintiff does
22 not file an amended complaint within thirty days, the case will be
23 DISMISSED without prejudice.

24

25 IT IS SO ORDERED.

26

27 Dated: December 9, 2015

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DEAN D. PREGERSON
United States District Judge