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8 **United States District Court**  
9 **Central District of California**

10 ALEXIS LOPEZ,

11 Plaintiff,

12 v.

13 PAMA MANAGEMENT, INC.; NIJAR  
14 REALTY, INC.; GROUP XII  
15 PROPERTIES, LP; GROUP XIII  
16 PROPERTIES, LP, and DOES 1-20,

17 Defendants.

Case No. 2:16-CV-9390-ODW-JCx

**ORDER GRANTING, IN PART, AND  
DENYING, IN PART, PLAINTIFF'S  
MOTION FOR SANCTIONS [30];  
AND DENYING DEFENDANTS'  
APPLICATION FOR LEAVE TO  
FILE SURREPLY [42]**

18 **I. INTRODUCTION**

19 On December 20, 2016, Plaintiff Alexis Lopez sued Defendants Pama  
20 Management, Inc., Nijjar Realty, Inc., Group XII Properties, LP, and Group XIII  
21 Properties, LP (collectively, "Defendants") for claims relating to disability  
22 discrimination. (Compl., ECF No. 1.) During the course of discovery, Defendants  
23 failed to comply with an order from Magistrate Judge Chooljian to provide further  
24 responses to Interrogatories and Requests for Production of Documents. (Order, ECF  
25 No. 27.) Lopez now moves for monetary sanctions, terminating sanctions, or an  
26 adverse inference instruction, in the alternative. (Mot., ECF No. 30.)<sup>1</sup> On October 12,

27 <sup>1</sup> After considering the moving papers, the Court deems the matter appropriate for decision  
28 without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.

1 2017, while the Motion was under submission, Defendants filed an Application for  
2 Leave to File a Surreply to Plaintiff’s Motion for Terminating/Issuing Sanctions.  
3 (Appl., ECF No. 42.) The Court **DENIES** Defendants’ Application for Leave to File  
4 a Surreply. For the reasons set forth below, the Court **GRANTS, IN PART,** and  
5 **DENIES, IN PART,** Plaintiff’s Motion to Terminate/Issue Sanctions.

## 6 **II. FACTUAL BACKGROUND**

7 In June 2016, Lopez was in a motorcycle accident that left him paralyzed.  
8 (Compl. ¶ 13.) As a result, Lopez is confined to a wheelchair. (*Id.*) Lopez resides in  
9 an apartment in El Monte, California (the “Property”), with his parents and siblings.  
10 (*Id.* ¶¶ 11, 13.) Defendants are the owners and/or managers of the Property. (*See id.*  
11 ¶¶ 4–7.)

12 After being released from the hospital, in June 2016, Lopez’s father requested  
13 that Defendants replace the carpet in his apartment with flooring because the carpet  
14 made it difficult for Lopez to move around the Property in his wheelchair. (*Id.* ¶ 15.)  
15 Defendants allegedly refused to provide such accommodation for Lopez and, as a  
16 result, Lopez filed this action alleging violations of the Fair Housing Act, the  
17 California Fair Employment and Housing Act, and the California Disabled Persons  
18 Act. (*See generally* Compl.) Lopez alleges that Defendants acted willfully, and thus  
19 seeks an award of punitive damages, in addition to actual damages. (*Id.* ¶ 24 (citing  
20 42 U.S.C. § 3613(c)(1), which provides for punitive damages for violations of the Fair  
21 Housing Act)).

22 On March 22, 2017, Lopez propounded discovery on Defendants seeking,  
23 among other things, information regarding Defendants’ financial well-being to support  
24 his punitive damages claim. (Belisle Decl. ¶ 2, ECF No. 30; Opp’n 2, ECF No. 31.)  
25 On May 31, 2017, after not receiving satisfactory responses to discovery requests  
26 pertaining to Defendants’ financial status, Lopez filed a Motion to Compel Further  
27 Responses to Interrogatories and Requests for Production of Documents before  
28 Magistrate Judge Chooljian. (ECF No. 23.) On July 14, 2017, Judge Chooljian

1 ordered Defendants to provide further responses to Interrogatories and Requests for  
2 Production of Documents sent by Lopez no later than August 1, 2017 (“the Discovery  
3 Order”). (Order 10.) The Discovery Order limited the temporal scope of the financial  
4 discovery requested by Lopez. (Order 4 (“Accordingly, the relevance objections are  
5 sustained to the extent the [requests] seek information/documents predating January  
6 2015 and overruled to the extent the [requests] seek information/documents from  
7 January 2015 to present....”).) The Discovery Order also noted that the parties had  
8 not sought the Court’s approval to bifurcate liability and damages, or discovery  
9 regarding the same. (*Id.*) Further, the Discovery Order specifically ordered Lopez not  
10 to disclose any of the information received, and only to use it as necessary to  
11 prosecute the instant action, in order to alleviate Defendants’ apparent concern that the  
12 information could be used for an improper purpose. (*Id.* at 10.)

13 The parties subsequently stipulated to allow Defendants an additional two  
14 weeks to comply with the Discovery Order. (Belisle Decl. ¶¶ 4–5.) On August 14,  
15 2017—one day before they were required to comply with the Discovery Order—  
16 Defendants requested an additional week extension, which Lopez denied. (*Id.* ¶¶ 8–  
17 9.) On August 16, 2017, Lopez’s counsel emailed defense counsel requesting  
18 compelled discovery responses, but defense counsel did not respond. (*Id.* ¶ 11.) Later  
19 that day, Defendants filed a Petition for Writ of Mandamus in the Ninth Circuit. (*Id.* ¶  
20 12; Ex. I, ECF No. 30-7.) Defendants have not sought a stay of this action while their  
21 Petition pends before the Ninth Circuit.

22 On September 28, 2017, while Lopez’s Motion was pending before the Court,  
23 and fully briefed by the parties, Defendants substituted in new counsel. (ECF No. 35.)  
24 Defendants then filed what they styled as a “Motion to Continue Motion for  
25 Terminating-Issue Sanctions,” which the Court struck because: 1) it did not provide  
26 adequate notice, as required by the Central District’s Local Rules; 2) the Court had  
27 already taken Lopez’s Motion for Sanctions under submission; and 3) the Motion was  
28 fully briefed by the parties. (ECF Nos. 37, 40.)

1 **III. DISCUSSION**

2 Federal Rule of Civil Procedure 37(b)(2)(A) authorizes a district court to  
3 impose appropriate sanctions where a party has failed to comply with an order to  
4 provide or permit discovery. In imposing sanctions pursuant to Rule 37(b), the Court  
5 may render a “default judgment against the disobedient party[,]” direct that the  
6 “matters embraced in the order or other designated facts be taken as established for  
7 purposes of the action, as the prevailing party claims[,]” or issue any other just order.

8 Lopez seeks the entry of default judgment against Defendants as a sanction for  
9 their refusal to comply with the Discovery Order. (Mot. 7–8.) In the alternative,  
10 Lopez seeks an adverse inference instruction that “Defendants’ finances support an  
11 award of punitive damages.” (*Id.* at 8–9.) Lastly, Lopez seeks to recover the  
12 reasonable expenses incurred in bringing this Motion. (*Id.* at 9.) Defendants contend  
13 that Lopez is not entitled to terminating sanctions because: 1) Defendants’ Petition for  
14 Writ of Mandamus regarding the Discovery Order is pending before the Ninth Circuit;  
15 2) there is no basis for the discovery sought; and 3) terminating sanctions are too  
16 extreme for these circumstances. (Opp’n 2–5.)

17 **A. Default Judgment**

18 Lopez contends that issuing default judgment against Defendants is an  
19 appropriate sanction because Defendants’ “refusal to provide discovery responses is  
20 calculated to delay litigation in this matter and [Lopez] is prejudiced by Defendants  
21 [sic] refusal.” (Mot. 8.) In their Opposition, Defendants argue that Lopez is not  
22 entitled to punitive damages and thus discovery regarding Defendants’ financial  
23 condition is unwarranted. (Opp’n 3.) However, Judge Chooljian already considered  
24 and rejected this argument when she ordered Defendants to produce limited financial  
25 information. (Order 3–4, 10.)

26 In determining whether terminating sanctions are appropriate, a district court  
27 must weigh: “(1) the public’s interest in expeditious resolution of litigation; (2) the  
28 court’s need to manage its docket; (3) the risk of prejudice to the party seeking

1 sanctions; (4) the public policy favoring disposition of cases on their merits; and (5)  
2 the availability of less drastic sanctions.” *Henry v. Gill Indus., Inc.*, 983 F.2d 943, 948  
3 (9th Cir. 1993) (quoting *Porter v. Martinez*, 941 F.2d 732, 733 (9th Cir. 1991)). The  
4 Ninth Circuit has “said that where a court order is violated, factors 1 and 2 support  
5 sanctions and 4 cuts against case-dispositive sanctions, so 3 and 5 . . . are decisive.”  
6 *Valley Eng’rs Inc. v. Elec. Eng’g Co.*, 158 F.3d 1051, 1057 (9th Cir. 1998).

7 The public possesses an interest in maintaining “the just, speedy, and  
8 inexpensive determination of every action.” Fed. R. Civ. P. 1. Furthermore, “District  
9 Courts have the inherent power to control their dockets.” *Thompson v. Hous. Auth. of*  
10 *City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). These factors typically weigh  
11 in favor of issuing sanctions. *Valley Eng’rs Inc.*, 158 F.3d at 1057. Lopez claims  
12 prejudice because Defendants’ failure to comply with the Discovery Order results in  
13 undue delay. (Mot. 8.) Because trial is set for February 6, 2018, however, the  
14 prejudice Lopez will suffer may be remedied by less harsh sanctions. At this juncture,  
15 Defendants still may comply with the Discovery Order sufficiently in advance of trial  
16 to allow Lopez to prepare his punitive damages case. Accordingly, these factors do  
17 not mandate as harsh a sanction as default.

18 A party suffers prejudice where the opposing party’s actions “impair [their]  
19 ability to go to trial or threaten to interfere with the rightful decision of the case.”  
20 *Adriana Int’l Corp. v. Thoeren*, 913 F.2d 1406, 1412 (9th Cir. 1990); *Malone v. U.S.*  
21 *Postal Service*, 833 F.2d 128, 131 (9th Cir. 1987). Failure to produce court-ordered  
22 documents may be indicative of prejudice. *Adriana Intern. Corp.*, 913 F.2d at 1412.  
23 Here, Defendants are withholding information that would assist the jury in calculating  
24 punitive damages. (Mot. 9.) However, this information would not necessarily affect  
25 the outcome of the case from a liability perspective, which is another factor the Court  
26 must consider.

27 Generally, the public policy in favor of adjudicating cases on the merits weighs  
28 strongly against terminating sanctions. *See In re Phenylpropanolamine (PPA) Prods.*

1 *Liability Litig.*, 460 F.3d 1217, 1228 (9th Cir. 2006). This factor only weighs lightly  
2 in cases where the “party whose responsibility it is to move a case toward disposition  
3 on the merits . . . impedes progress in that direction.” *Id.* In other words, this factor  
4 weighs heavily against terminating sanctions unless it is the plaintiff who fails to  
5 produce discovery. *See id.* Here, this factor weighs against terminating sanctions as it  
6 is Defendants who have refused to comply with the Discovery Order, and the  
7 information being withheld goes to a portion of Lopez’s alleged damages.

8 There are less drastic sanctions that are feasible and appropriate here. In his  
9 Motion, Lopez seeks monetary sanctions as well as an adverse inference instruction in  
10 the alternative to default judgment. (Mot. 8–9.) The Court finds monetary sanctions  
11 are a more appropriate sanction at this time, as discussed below. A terminating  
12 sanction is “a harsh penalty and is to be imposed only in extreme circumstances.”  
13 *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986). If Defendants continue  
14 to disregard the Discovery Order, those extreme circumstances may arise.

15 **B. Adverse Inference Instruction**

16 Under Rule 37(b), “a court has authority to instruct a jury that it may make an  
17 inference with respect to certain factual matters based on a party’s failure to produce  
18 evidence on those factual matters.” *Parrick v. FedEx Ground Package Sys., Inc.*, No.  
19 CV 09-95-MDWMJCL, 2010 WL 3724825, at \*5 (D. Mont. Sept. 17, 2010). Where  
20 “a party fails to produce [evidence] . . . the fair inference is that that evidence would  
21 have weighed against the party who held it back.” *Computer Assocs. Int’l, Inc. v. Am.*  
22 *Fundware, Inc.*, 133 F.R.D. 166, 170 (D. Colo. 1990) (citing *Hammond Packing Co.*  
23 *v. Arkansas*, 212 U.S. 322, 350–51 (1909)).

24 Lopez argues that an adverse inference instruction is appropriate because  
25 Defendants refuse to comply with the Discovery Order and that “the discovery sought  
26 here is relevant to punitive damages calculations.” (Mot. 9.) The Court finds this  
27 form of sanction to be too harsh at this time. The Court orders Defendants to comply  
28 with the Discovery Order within seven days of the date of this Order.

1           Despite Defendants’ qualms with the Discovery Order, it is the order of the  
2 Court, and cannot be disregarded. *See Pasadena City Bd. of Educ. v. Spangler*, 427  
3 U.S. 424, 439 (1976) (“It is for the court of first instance to determine the question of  
4 the validity of the law, and until its decision is reversed for error by orderly review,  
5 either by itself or by a higher court, its orders based on its decision are to be respected,  
6 and disobedience of them is contempt of its lawful authority, to be punished.”). This  
7 matter is not automatically stayed pending the resolution of Defendants’ Petition for  
8 Writ of Mandamus, nor have Defendants sought a stay of this action. *See Powertech*  
9 *Tech. Inc. v. Tessera, Inc.*, No. C 11–6121 CW, 2013 WL 1164966, at \*1–2 (N.D.  
10 Cal. March 20, 2013) (denying stay pending party’s petition for writ of mandamus in  
11 light of discovery order, and explaining standard for stay as analogous to that of a  
12 preliminary injunction). In any event, the Court would not look favorably on a request  
13 for a stay, given that Defendants would have to show likelihood of success on their  
14 Petition for Writ of Mandamus, which would be difficult to do given that it is a  
15 discretionary, drastic remedy. *See Cole v. U.S. Dist. Court for D.C.*, 542 U.S. 367,  
16 379 (2004).

17           In addition, Defendants failed to follow the appropriate procedure for  
18 challenging the Discovery Order, which will likely be fatal to their Petition for Writ of  
19 Mandamus. *See Cole v. U.S. Dist. Court for Dist. of Idaho*, 366 F.3d 813, 819–20  
20 (9th Cir. 2004) (noting narrow exception, and holding “[a]part from this necessarily  
21 narrow exception, failure to seek reconsideration of a magistrate judge’s non-  
22 dispositive ruling by statutory appeal to the district court under 28 U.S.C.  
23 § 636(b)(1)(A) will preclude a finding that the first *Bauman* factor is shown, which, in  
24 turn, will weigh heavily against the granting of the writ.”) Further, Central District  
25 Local Rule 72 provides:

26           Any party objecting under [Federal Rule of Civil Procedure] 72(a) to  
27           a Magistrate Judge’s ruling on a pretrial matter not dispositive of a  
28           claim or defense *must* file a motion for review by the assigned District

1 Judge, designating the specific portions of the ruling objected to and  
2 stating the grounds for the objection. Such motion shall be filed within  
3 fourteen (14) days...of service of a written ruling.

4 C.D. Cal. Local Rule 72-2.1 (emphasis added). Defendants did not follow this  
5 procedure. Moreover, the Local Rules explicitly provide that “[r]egardless of whether  
6 a motion for review has been filed, the Magistrate Judge’s ruling remains in effect  
7 *unless the ruling is stayed or modified by the Magistrate Judge or the District Judge.*”  
8 *Id.* 72-2.2 (emphasis added). Defendants completely disregarded the Local Rules and  
9 the proper procedure. Defendants did not seek review of the Discovery Order, and  
10 now the time to do so has long expired. *See* C.D. Cal. Local Rule 72-2.1 (establishing  
11 deadline for filing motion for review of magistrate judge’s order as fourteen days after  
12 entry of order—here, no later than July 28, 2017). Should Defendants choose to  
13 continue to disregard the Discovery Order, the Court is inclined to issue an adverse  
14 inference instruction. In the event Defendants fail to comply with the Court’s Order  
15 as detailed here, Lopez is invited to move the Court for an adverse inference, and  
16 submit proposed wording of such an inference for the Court’s review.

17 **C. Reasonable Expenses**

18 Rule 37 allows for courts to “order the disobedient party, the attorney advising  
19 that party, or both to pay the reasonable expenses, including attorney’s fees, caused by  
20 the failure” to comply with a discovery order. Fed. R. Civ. P. 37(b)(2)(C). Here,  
21 Lopez seeks to recover \$1,885.00 in costs and fees incurred on this Motion. (Mot. 9.)  
22 Defendants’ Opposition does not address the monetary sanction sought by Lopez.  
23 (*See generally* Opp’n). Therefore, the Court finds that Lopez’s proposed amount is  
24 reasonable and orders Defendants to pay Lopez \$1,885.00, within fourteen days of  
25 this Order.

26 **D. Defendants’ Application to File Surreply**

27 On October 12, 2017, Defendants filed an Application for Leave to File  
28 Surreply to Plaintiff’s Motion for Terminating/Issuing Sanctions. (Appl.) Defendants



1 argue that they should be granted leave to file a surreply because they substituted in  
2 new counsel on September 28, 2017, and claim to have new arguments to oppose  
3 Lopez’s Motion. (Appl. 2–3.) The parties fully briefed this Motion nearly one month  
4 ago, and Defendants have had ample time to bring their application in a timely  
5 fashion, and through the proper procedures.<sup>2</sup> In fact, Defendants’ Application largely  
6 regurgitates arguments set forth in Defendants’ Motion to Continue (ECF No. 37),  
7 which the Court struck. (ECF No. 40.) For these reasons, the Court **DENIES**  
8 Defendants’ Application.

#### 9 **IV. CONCLUSION**

10 For the reasons set forth above, Defendants are:

- 11 1. **ORDERED** to pay **\$1,885.00** to Lopez for the reasonable costs and fees  
12 associated with bringing this Motion within fourteen days of the date of  
13 this Order;
- 14 2. **ORDERED** to comply with the Discovery Order (ECF No. 27), within  
15 seven days of the date of this Order; and
- 16 3. **ORDERED** to file a declaration with this Court on, or before **October**  
17 **25, 2017**, stating whether they have complied with Judge Chooljian’s  
18 Order.

19 Should Defendants disregard this Court’s Order, and continue to disregard the  
20 Discovery Order, Defendants will be further sanctioned, and ordered to pay to the  
21 Clerk of the Court, **\$200.00 per day**, for each day they fail to comply with the  
22 Discovery Order after **October 24, 2017**. Defendants cannot continue to disregard the  
23 proper procedures, and orders of the Court.

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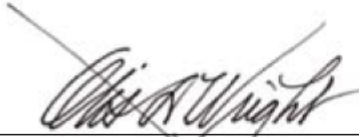
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<sup>2</sup> Briefing closed on September 18, 2017, fourteen days before the scheduled hearing.

1 For the reasons stated above, the Court **DENIES** Defendants' Application for  
2 Leave to File a Surreply (ECF No. 42), and **GRANTS, IN PART**, and **DENIES, IN**  
3 **PART**, Plaintiff's Motion for Sanctions. (ECF No. 30.)

4  
5 **IT IS SO ORDERED.**

6 October 17, 2017

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10 **OTIS D. WRIGHT, II**  
11 **UNITED STATES DISTRICT JUDGE**

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