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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 REBECCA ORTIZ,

11 Plaintiff,

12 v.

13 WALMART, INC.; DOES 1 THROUGH
14 25, INCLUSIVE

15 Defendant.

Case No.: 20-cv-02219-GPC(AGS)

**ORDER GRANTING DEFENDANT
JULIO GALVAN'S MOTION TO
DISMISS AS UNOPPOSED**

[Dkt. No. 34.]

16
17 Before the Court is Defendant Julio Galvan's motion to dismiss first amended
18 complaint against him for failing to timely serve. (Dkt. No. 34.) No opposition was
19 filed. Based on the reasoning below, the Court GRANTS Defendant's motion as
20 unopposed.

21 **BACKGROUND**

22 On May 28, 2020, Plaintiff Rebecca Ortiz ("Plaintiff") filed a complaint in San
23 Diego Superior Court against Defendant Walmart, Inc. alleging negligence and premises
24 liability for injuries she allegedly sustained while shopping at Defendant's store located
25 at 2540 Rockwood Avenue in Calexico, California. (Dkt. No. 1-2, Compl.) On
26 November 13, 2020, Defendant removed this action to this Court. (Dkt. No. 1.) On April
27 26, 2021, the Court granted Plaintiff's motion for leave to file an amended complaint.

1 (Dkt. No. 17.) Plaintiff filed a first amended complaint (“FAC”) against Defendant
2 Walmart, Inc., Cesar Rico (“Rico”), and Julio Galvan (“Galvan”). (Dkt. No. 18.)
3 Defendants Walmart and Rico filed their answers. (Dkt. Nos. 25, 33.) Defendant Gavan
4 filed a motion to dismiss the FAC against him because he was not timely served. (Dkt.
5 No. 34.) No opposition was filed.

6 DISCUSSION

7 Civil Local Rule 7.1.e.2. requires a “party opposing a motion to file an opposition
8 or statement of non-opposition within fourteen calendar days of the noticed hearing.
9 Failure to comply with these rules “may constitute a consent to the granting of a motion.”
10 Civ. Local R. 7.1.f.3.c. District courts have broad discretion to enact and apply local
11 rules, including dismissal of a case for failure to comply with the local rules. *Ghazali v.*
12 *Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (affirming grant of an unopposed motion to
13 dismiss under local rule by deeming a pro se litigant’s failure to oppose as consent to
14 granting the motion); *United States v. Warren*, 601 F.2d 471, 474 (9th Cir. 1979). Before
15 dismissing an action for failure to comply with local rules, the district court “weigh[s]
16 several factors: ‘(1) the public’s interest in expeditious resolution of litigation; (2) the
17 court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the
18 public policy favoring disposition of cases of their merits; and (5) the availability of less
19 drastic sanctions.’” *Ghazali*, 46 F.3d at 53 (quoting *Henderson v. Duncan*, 779 F.2d
20 1421, 1423 (9th Cir.1986)).

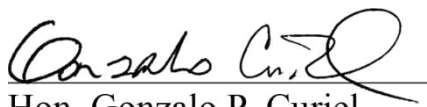
21 Here, the Court concludes that “the public’s interest in expeditious resolution of
22 litigation,” “the court’s need to manage its docket,” and “the risk of prejudice to the
23 defendants” weigh in favor of granting the motion to dismiss based on Plaintiff’s failure
24 to file an opposition. *See Ghazali*, 46 F.3d at 53. Because the majority of these factors
25 weigh in favor of dismissal, the Court finds good cause to grant Defendant Galvan’s
26 unopposed motion to dismiss the FAC against him. *See Civ. Local R. 7.1.f.3.c; see also*
27 *Ghazali*, 46 F.3d at 53.

1 **Conclusion**

2 Based on the above, the Court GRANTS Defendant Galvan's motion to dismiss the
3 FAC against him. The hearing set on November 19, 2021 shall be **vacated**.

4 IT IS SO ORDERED.

5 Dated: November 16, 2021

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7 Hon. Gonzalo P. Curiel
8 United States District Judge
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