UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

GEORGE L. MARSHALL,

Plaintiff(s),

v.

JAMES COX, et al.,

Defendant(s).

Case No. 2:16-cv-0566-JAD-NJK

ORDER

(Docket Nos. 7, 8)

Pending before the Court is Defendants' motion to exempt this case from mediation. Docket No. 7. Defendants seek such relief because Plaintiff failed to appear at a mediation in another case in 2016, and has not responded to Defendants' counsel's queries regarding prosecuting this case. *Id.* at 2-3. The Court is not persuaded that these grounds suffice to exempt this case from mediation, and the motion is **DENIED**.

Also pending before the Court is Defendants' motion for an order to show cause why this case should not be dismissed for failure to prosecute. Docket No. 8. The only conduct identified arising from this case is Plaintiff's non-responsiveness to Defendants' counsel's queries regarding the case. *Id.* at 2-3. Defendants provide no legal authority that a plaintiff's non-response to opposing counsel's communications could be sufficient grounds to dismiss his case for lack of prosecution. Similarly, although Defendants again note Plaintiff's failure to appear at a mediation in another case in 2016, *see id.*, they provide no legal authority that such conduct in a different case could constitute a failure to prosecute this case. In short, while Defendants may believe that Plaintiff will not prosecute his case, they have not identified facts and legal authority showing that he has actually failed to do so at this point. Defendants' motion is premature.

Accordingly, the motion for an order to show cause why the case should not be dismissed for failure to prosecute is **DENIED** without prejudice. To the extent Plaintiff fails to prosecute his case moving forward, Defendants may seek relief from the Court.[1]

IT IS SO ORDERED.

Dated: October 30, 2017

NANCY J. KOPPE
UNITED STATES MAGISTRATE JUDGE

[1] The Court expresses no opinion herein whether any future motion will be granted.