

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

MIGUEL ORTIZ,

Plaintiff,

Case No. 2:16-cv-00825-JCM-NJK

ORDER

V.

PACIFIC UNION FINANCIAL,

Defendant.

Presently before the court is defendant Pacific Union Financial's motion to dismiss. (ECF No. 13). Plaintiff Miguel Ortiz has not responded to the motion despite his other activity in the case, and the deadline to submit a response has elapsed.¹

Although the court has granted the parties' request that the Short Trial Rules of the United States District Court for the District of Nevada apply in this case, that request made no mention of plaintiff's failure to respond to defendant's motion to dismiss. See (ECF Nos. 28, 29). Thus, this court may adjudicate the motion to dismiss even though it has granted the request for a short trial. See Short Trial Rule 6 (indicating that a judge will decide outstanding motions).

The local rules have the force of law. See *United States v. Hvass*, 355 U.S. 570, 574–575 (1958). Under Local Rule 7-2(d), “[t]he failure of an opposing party to file points and authorities in response to any motion . . . constitutes a consent to the granting of the motion.” The Ninth Circuit instructs that a district court must weigh several factors before granting a motion filed pursuant to Federal Rule of Civil Procedure 12 because a party failed to comply with a local rule:

¹ Although defendant has submitted an affidavit of service referring to its “reply to opposition to motion to dismiss,” neither the reply nor the opposition to the motion are present on the docket of this case. (ECF No. 21).

1 “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its
2 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
3 cases o[n] their merits; and (5) the availability of less drastic sanctions.” Ghazali v. Moran, 46
4 F.3d 52, 53 (9th Cir. 1995) (quoting Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986))
5 (discussing a Nevada local rule construing a failure to oppose a motion as effectively consenting
6 to the granting of that motion); see also Martinez v. Stanford, 323 F.3d 1178, 1183 (9th Cir.
7 2003) (indicating that Ghazali provides the applicable rule for evaluating a Rule 12 motion to
8 dismiss in light of a local rule authorizing dismissal).

9 This court finds that granting defendant's motion to dismiss would protect the public's
10 interest in the expeditious resolution of litigation. See Ghazali, 46 F.3d at 53.

11 This court also finds that granting defendant's motion to dismiss would permit the court
12 to effectively manage its docket. See id. Additionally, defendant would be prejudiced if the
13 court did not rule on the present motion because it would be forced to wait until August 2017 to
14 begin trial. See (ECF No. 29).

15 This court acknowledges the public policy favoring the disposition of cases on their
16 merits. See Ghazali, 46 F.3d at 53. However, dismissal is an appropriate sanction in this
17 circumstance because over two months have elapsed since the expiration of plaintiff's response
18 deadline, and plaintiff has yet to file an opposition to defendant's motion to dismiss. Indeed,
19 "pro se litigants are bound by the rules of procedure." Id. at 54.

20 Weighing the Ghazali factors, this court finds that defendant's motion to dismiss will be
21 granted pursuant to Local Rule 7-2(d). See *id.* at 53.

22 | Accordingly,

23 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Pacific
24 Union Financial's motion to dismiss (ECF No. 13) be, and the same hereby is, GRANTED,
25 without prejudice.

26 DATED THIS 5th day of May, 2017.

James C. Mahan
JAMES C. MAHAN
UNITED STATES DISTRICT JUDGE