

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 ARIEL LEON,)
4)
5 Plaintiff,)
6 vs.)
7 WYNN LAS VEGAS, LLC,)
8 Defendant.)

Case No.: 2:16-cv-01623-GMN-GWF

ORDER

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10 Pending before the Court is the Motion to Dismiss, (ECF No. 26), filed by Defendant
11 Wynn Las Vegas, LLC ("Defendant"). Plaintiff Ariel Leon ("Plaintiff")¹ filed a Response,
12 (ECF No. 36), and Defendant filed a Reply, (ECF No. 37). For the reasons set forth herein,
13 Defendant's Motion to Dismiss is GRANTED.

14 I. BACKGROUND

15 Plaintiff initiated this action on July 12, 2016, alleging claims of race and national origin
16 discrimination, disability discrimination, retaliation, and intentional infliction of emotional
17 distress. (Compl., ECF No. 1). Plaintiff was initially represented by the law firm of Kang and
18 Associates, PLLC ("Kang"). (See id.). On January 5, 2017, Kang filed a Motion to Withdraw,
19 citing an irreparable disagreement with Plaintiff regarding the merits and direction of the case.
20 (See Mot. to Withdraw at 6, ECF No. 21). Anticipating delay, the parties stipulated to extend
21 the discovery deadlines by an additional 90 days. (Stipulation to Extend, ECF No. 22).

22 On January 19, 2017, the Court granted the parties' request for a discovery extension.
23 (Extension Order, ECF No. 23). Shortly thereafter, the Court granted Kang's Motion to

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25 ¹ In light of Plaintiff's status as a pro se litigant, the Court has liberally construed his filings, holding them to
standards less stringent than formal pleadings drafted by attorneys. See Erickson v. Pardus, 551 U.S. 89, 94
(2007).

1 Withdraw and advised Plaintiff that “if he intends to retain new counsel, he must do so
2 promptly.” (Withdrawal Order 1:21–22, ECF No. 25). Additionally, the Court cautioned
3 Plaintiff that “[i]n the event Plaintiff chooses to proceed pro se, he is advised that he has a duty
4 to comply with all applicable rules of civil procedure and court orders.” (Id. 1:22–23). On
5 April 11, 2017, Defendant filed the instant Motion to Dismiss. (See Mot. to Dismiss, ECF No.
6 26).

7 **II. DISCUSSION**

8 Defendant argues for dismissal based on Plaintiff’s failure to respond to discovery
9 requests and failure to prosecute the case. (See Mot. to Dismiss 2:3–18). Specifically,
10 Defendant asserts that Plaintiff has failed to provide any responses to Defendant’s requests for
11 production of documents and interrogatory questions despite numerous extensions. (Id.).
12 Additionally, Defendant asserts that Plaintiff “was completely unprepared for his deposition”
13 and unfamiliar with his own Complaint. (Reply 4:11–14, ECF No. 37). Defendant also cites to
14 repeated and failed attempts to communicate with Plaintiff regarding discovery obligations and
15 scheduling matters. (See Exs. 4–6 to Mot. to Dismiss). According to Defendant, Plaintiff’s
16 conduct demonstrates a “lack of interest in complying with the applicable rules of civil
17 procedure and this Court’s Order.” (See Mot. to Dismiss 2:16–18).

18 On February 21, 2018, Plaintiff filed a response to Defendant’s Motion to Dismiss. In
19 this response, however, Plaintiff entirely fails to address the issues raised in the underlying
20 motion. Under Local Rule 7–2(d), “[t]he failure of an opposing party to file points and
21 authorities in response to any motion shall constitute a consent to the granting of the motion.”
22 D. Nev. R. 7–2(d). As the Ninth Circuit has held, “[f]ailure to follow a district court’s local
23 rules is a proper ground for dismissal.” *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir.1995); see,
24 e.g., *Roberts v. United States of America*, 01–cv–1230–RLH–LRL, 2002 WL 1770930 (D. Nev.
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1 June 13, 2002). The Court therefore finds that Plaintiff has consented to the dismissal of this
2 case.

3 In addition to Plaintiff's lack of opposition, Plaintiff's failure to engage in the discovery
4 process and follow Court orders likewise warrants dismissal. In evaluating dismissal as a
5 sanction, district courts must weigh five factors: "(1) the public's interest in expeditious
6 resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to
7 defendants/respondents; (4) the availability of less drastic sanctions; and (5) the public policy
8 favoring disposition of cases on their merits." *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th
9 Cir. 2002).

10 Upon review of the record, the Court finds that four of the five factors favor dismissal.
11 First, "the public's interest in expeditious resolution of litigation always favors dismissal."
12 *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir.1999). Second, the Court's need to
13 manage its docket is manifest. See *State Farm Mutual Automobile Insurance Company v.*
14 *Ireland*, 2:07-cv-01541-RCJ-RJJ, 2009 WL 4280282 (D.Nev. Nov. 30, 2009). Third,
15 Plaintiff's failure to cooperate throughout the discovery process has unreasonably delayed the
16 resolution of this case, and such unreasonable delay "creates a presumption of injury to the
17 defense." *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir.1986). Fourth, the Court has
18 weighed less drastic sanctions and finds that, given Plaintiff's minimal and noncompliant
19 participation in this case, any sanction short of dismissal would be ineffective. Lastly, while
20 the public policy favoring disposition of cases on their merits weighs against dismissal, the fact
21 that the other four factors strongly favor dismissal is dispositive in this instance. The Court
22 therefore grants dismissal without prejudice.

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1 **III. CONCLUSION**

2 **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss, (ECF No. 26), is
3 **GRANTED**. This case is dismissed without prejudice.

4 The Clerk of Court is instructed to close the case.

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6 **DATED** this 12 day of March, 2018.

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10 Gloria M. Navarro, Chief Judge
11 United States District Judge
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