

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3
4
5 KEVIN ZIMMERMAN,)
6 Plaintiff,) Case No.: 2:17-cv-00524-GMN-GWF
7 vs.)
8 D & C INCORPORATED,) **ORDER**
9 Defendant.)
10

11 Before the Court is the Motion to Dismiss, (ECF No. 20), filed by Defendant D & C
12 Incorporated (“Defendant”). Plaintiff Kevin Zimmerman (“Plaintiff”) has failed to file a
13 Response to the Motion to Dismiss. For the reasons that follow, the Court GRANTS
14 Defendant’s Motion to Dismiss.

15 **I. BACKGROUND**

16 Plaintiff filed this lawsuit on February 22, 2017. (App. For Leave to Proceed In Forma
17 Pauperis, ECF No. 1). On May 15, 2017, Defendant filed a Motion to Dismiss. (ECF No. 20).
18 Pursuant to Local Rule 7-2(b) of the Local Rules of Practice of the United States District Court
19 for the District of Nevada, Plaintiff had fourteen days after service of the Motion to file a
20 response. Accordingly, Plaintiff had until May 29, 2017, to file a response. Not only did
21 Plaintiff fail to meet this deadline, Plaintiff has failed to file any response at all.

22 **II. DISCUSSION**

23 Local Rule 7-2(d) provides that “[t]he failure of an opposing party to file points and
24 authorities in response to any motion shall constitute a consent to the granting of the motion.”
25

1 D. Nev. R. 7-2(d). As the Ninth Circuit has held, “[f]ailure to follow a district court’s local rules
2 is a proper ground for dismissal.” *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); see, e.g.,
3 *Roberts v. United States of America*, No. 2:01-cv-1230-RLH-LRL, 2002 WL 1770930 (D. Nev.
4 June 13, 2002). However, before dismissing a case for failing to follow local rules or for failure
5 to prosecute, the district court 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 Cir.
9 2002).

10 Under this test, “the public’s interest in expeditious resolution of litigation always favors
11 dismissal.” *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999). Also, the Court’s need
12 to manage its docket is manifest. See *State Farm Mut. Auto. Ins. Co. v. Ireland*, No. 2:07-cv-
13 01541-RCJ-RJJ, 2009 WL 4280282 (D. Nev. Nov. 30, 2009). Further, Plaintiff’s failure to
14 timely respond to Defendant’s motion has unreasonably delayed the resolution of this case, and
15 such unreasonable delay “creates a presumption of injury to the defense.” *Henderson v. Duncan*,
16 779 F.2d 1421, 1423 (9th Cir. 1986). Less drastic sanctions available to the Court include
17 dismissal of Plaintiff’s Complaint without prejudice.

18 The fifth factor also does not weigh in favor of Plaintiff because it is not clear that this
19 case was likely to be decided on the merits. Plaintiff has failed to take any action since the
20 Motion to Dismiss was filed. Accordingly, the Court concludes that consideration of the five
21 factors discussed above weighs in favor of dismissal.

22 ///

23 ///


24 ///

25 ///

1 **III. CONCLUSION**

2 **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss, (ECF No. 20), is
3 **GRANTED**. Plaintiff's Complaint, (ECF No. 11), is **DISMISSED without prejudice**. The
4 clerk shall enter judgment accordingly.

5 **DATED** this 9 day of June, 2017.

6
7 
8 _____
9 Gloria M. Navarro, Chief Judge
10 United States District Judge
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25