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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

STEPHEN SAUNDERS,)	3:18-cv-00198-HDM-WGC
)	
Plaintiff,)	ORDER
)	
vs.)	
)	
ALLSTATE INDEMNITY,)	
)	
Defendant.)	
)	

Before the Court is the Defendant Allstate Indemnity's ("Defendant") partial motion to dismiss (ECF No. 7). Plaintiff Stephen Saunders ("Plaintiff") has not filed a response, and the time for doing so has since passed.

Also before the Court is Defendant's alternative motion to stay claims for bad faith (ECF No. 8). Plaintiff has not filed a response, and the time for doing so has since passed.

I. BACKGROUND

This is a removed case filed on April 4, 2018 in the Second Judicial District Court of Nevada for the County of Washoe County. (See ECF No. 1). Plaintiff alleges that he was in an automobile

1 accident and incurred medical expenses and other damages in excess
2 of \$250,000. (ECF No. 1-1 at 3-4). Plaintiff alleges that he is
3 entitled to Underinsured Motorist coverage of \$250,000 under the
4 policy Defendant issued to the owner of the vehicle Plaintiff was
5 driving at the time of the accident. (*Id.*) Plaintiff alleges that
6 he has asked Defendant to pay \$250,000 for his claim, but Defendant
7 has denied the claim. (*Id.*) Plaintiff asserts four causes of
8 action against Defendant: (1) breach of contract; (2) bad faith;
9 (3) breach of Nevada Unfair Claims Settlement Practices Act; and
10 (4) punitive damages (*Id.* at 4-6).

11 **II. LEGAL STANDARD**

12 In considering a motion to dismiss for failure to state a
13 claim under Fed.R.Civ.P. 12(b)(6), the court must accept as true
14 all material allegations in the complaint as well as all reasonable
15 inferences that may be drawn from such allegations. *LSO, Ltd. v.*
16 *Stroh*, 205 F.3d 1146, 1150 (9th Cir. 2000). The allegations of the
17 complaint also must be construed in the light most favorable to the
18 nonmoving party. *Shwarz v. United States*, 234 F.3d 428, 435 (9th
19 Cir. 2000). The purpose of a motion to dismiss under Rule 12(b)(6)
20 is to test the legal sufficiency of the complaint. *Navarro v.*
21 *Block*, 250 F.3d 729, 732 (9th Cir. 2001). The court can grant the
22 motion only if it is certain that the plaintiff will not be
23 entitled to relief under any set of facts that could be proven
24 under the allegations of the complaint. *Cahill v. Liberty Mut.*
25 *Ins. Co.*, 80 F.3d 336, 338 (9th Cir. 1996).

26 **III. DISCUSSION**

27 Defendant moves to dismiss Plaintiff's second, third, and
28 fourth causes of action for failure to state a claim, or in the

1 alternative, Defendant requests this Court sever the bad faith
2 claims and stay them until the benefits claim is decided. (See ECF
3 Nos. 7, 8).

4 Pursuant to Local Rule 7-2(d), "[t]he failure of an opposing
5 party to file points and authorities in response to any motion,
6 except a motion under Fed.R.Civ.P. 56 or a motion for attorney's
7 fees, constitutes a consent to the granting of the motion." See
8 also, *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) ("Failure to
9 follow a district court's local rules is a proper ground for
10 dismissal."). It is unnecessary for the Court to consider the
11 factors for dismissal set forth in *Henderson v. Duncan*, 779 F.2d
12 1421, 1423 (9th Cir. 1986), because this order only dismisses three
13 of the four claims. Therefore, Plaintiff's failure to respond to
14 Defendant's motion constitutes consent to granting of the motion.

15 **IV. CONCLUSION**

16 For the reasons stated above, it is hereby ordered that
17 Defendant's partial motion to dismiss the second, third, and fourth
18 causes of action (ECF No. 7) is **GRANTED**.

19 It is further ordered that Defendant's alternative motion to
20 stay (ECF No. 8) is **DENIED** as moot.

21 **IT IS SO ORDERED.**

22 DATED: This 11th day of June, 2018.

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24 _____
25 UNITED STATES DISTRICT JUDGE
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