

**UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA**

Salvador Caldera v. PNY Technologies, Inc., et al.

Caldera v. PNY Technologies · No. CV 25-7462 PA (MAAx) · Decided October 3, 2025

OPINION

Salvador Caldera v. PNY Technologies, Inc., et al.

PER CURIAM.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 25-7462 PA (MAAx) Date October 3, 2025 Title Salvador Caldera v. PNY Technologies, Inc., et al. Present: The Honorable PERCY ANDERSON, UNITED STATES DISTRICT JUDGE Kamilla Sali-Suleyman Not Reported N/A Deputy Clerk Court Reporter Tape No. Attorneys Present for Plaintiffs: Attorneys Present for Defendants: None None Proceedings: IN CHAMBERS — COURT ORDER On August 22, 2025, the Court issued its Order Scheduling Meeting of Counsel, setting a Scheduling Conference for October 6, 2025. (Docket No. 9 (“Order Setting Scheduling Conference”).) The Order warns: “The failure to submit a joint report in advance of the Scheduling Conference or the failure to attend the Scheduling Conference may result in the dismissal of the action, striking the answer and entering a default, and/or the imposition of sanctions.” (Id.) On September 22, 2025, the parties filed a Notice of Settlement. (Docket No. 10.) On the same day, the Court issued an Order requiring the parties to either “file with the court a dismissal of the action or to appear, in-person or telephonically with their clients, to place the settlement on the record,” within ten (10) days from the date of the Order. (Docket No. 11 (“September 22, 2025 Order”).) The Court explicitly warned, “If the parties do not dismiss the action or do not place the settlement on the record, the matter will remain on the Court’s active trial calendar with all pretrial and trial dates in effect.” (Id.) Despite these warnings, however, the parties have not filed the Joint Scheduling Report required by Federal Rule of Civil Procedure 26(f), Local Rule 26, and the Court’s Order Setting Scheduling Conference, nor have the parties complied with the September 22, 2025 Order. Federal Rule of Civil Procedure 41(b) provides that a defendant may move for dismissal of an action “[i]f the plaintiff fails to prosecute or to comply with these rules or a court order.” Although Rule 41(b) provides for dismissal on the motion of the defendant, the Court can also dismiss an action sua sponte pursuant to Rule 41(b). See *Link v. Wabash R.R.*, 370 U.S. 626, 629-30, 82 S. Ct. 1386, 1388, 8 L. Ed. 2d 734 (1962); see also *Alexander v. Pac. Maritime Ass’n*, 434 F.2d 281, 283-84 (9th Cir. 1970). The permissive language of Rule 41 — that defendant “may” move for dismissal — does not limit the Court’s ability to

dismiss sua sponte if the defendant makes no motion for dismissal. *Link*, 370 U.S. at 630, 82 S. Ct. at 1388-89. The Court has the inherent power to achieve the orderly and expeditious disposition of cases by dismissing actions pursuant to Rule 41(b) with prejudice for failure to prosecute or for failure to

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(3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.” *Id.* at 1423. Cases involving sua sponte dismissal merit special focus on considerations relating to the fifth Henderson factor. *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998). Dismissal is appropriate “where at least four factors support dismissal, . . . or where at least three factors ‘strongly’ support dismissal.” *Id.* (citing *Ferdik*, 963 F.2d at 1263). Here, in assessing the first Henderson factor, the public’s interest in expeditious resolution of litigation, will be satisfied by a dismissal. See *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (citing *Yourish*, 191 F.3d at 990 (public’s interest in expeditious resolution of litigation always favors dismissal)). Relatedly, with respect to the second factor, the Court’s need to manage its docket will be served by dismissal. See *id.* The third Henderson factor also favors dismissal. While “pendency of a lawsuit is not sufficiently prejudicial in and of itself to warrant dismissal,” see *Pagtalunan*, 291 F.3d at 642, unreasonable delay creates a presumption of prejudice, see *In re Eisen*, 31 F.3d 1447, 1452 (9th Cir. 1994); *Moore v. Teflon Comme’ns Corp.*, 589 F.2d 959, 967-68 (9th Cir. 1978). Moreover, “[w]here a party offers a poor excuse for failing to comply with a court’s order, the prejudice to the opposing party is sufficient to favor dismissal.” *Rollins v. Superior Ct. of Los Angeles*, 706 F. Supp. 2d 1008, 1014 (C.D. Cal. 2010) (citing *Yourish*, 191 F.3d at 991-92). Here, neither the plaintiff nor the defendant offer any excuse for failing to comply with the Court’s Order Setting Scheduling Conference or the Court’s September 22, 2025 Order. In considering the fourth and fifth Henderson factors, this Court’s Order Setting Scheduling Conference, as noted above, warned that “failure to submit a joint report in advance of the Scheduling Conference or the failure to attend the Scheduling Conference may result in the dismissal of the action.” Despite this warning, the parties failed to submit the required report. Similarly, the Court’s September 22, 2025 Order

warned the parties of the consequences of their failure to dismiss the action or place the settlement on the record, but despite this warning, the parties did not comply with the Order. The public policy favoring the disposition of cases on their merits, ordinarily weighs against dismissal. See *Dreith v. Nu Image, Inc.*, 648

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Case No. CV 25-7462 PA (MAAx) Date October 3, 2025 Title Salvador Caldera v. PNY Technologies, Inc., et al. F.3d 779, 788 (9th Cir. 2011). However, it is the responsibility of the plaintiff to prosecute the action at a reasonable pace and to refrain from dilatory and evasive tactics. See *Morris v. Morgan Stanley & Co.*, 942 F.2d 648, 652 (9th Cir. 1991). Here, the plaintiff has failed to discharge this responsibility to prosecute this action despite the Court's express warnings. Additionally, the Court intends to dismiss this action without prejudice. Thus, the fifth Henderson factor favors dismissal because the Court has adopted the "less-drastic" sanction of dismissal without prejudice. See *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir. 1996) (district court should first consider less drastic alternatives to dismissal with prejudice). Accordingly, as a result of the parties' violations of the Court's Order Setting Scheduling Conference and the Court's September 22, 2025 Order, and failure to prosecute, this action is dismissed without prejudice. See Federal Rule of Civil Procedure 41(b); see also *Yourish*, 191 F.3d at 986-88; *Ferdik*, 963 F.2d at 1260. The Scheduling Conference calendared for October 6, 2025, is vacated. IT IS SO ORDERED.