

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Nanak Foundation Trust Dated May 27, 2011 v. Landmark American
Insurance Company, et al.

Nanak Foundation Trust · No. 24-cv-01352-DMR · Decided December 8, 2025

SUMMARY

The United States District Court for the Northern District of California denied defendants’ motion to dismiss the action with prejudice under Federal Rule of Civil Procedure 41(b) for failure to prosecute. Applying the Henderson factors, the court concluded that each factor favored non-dismissal, particularly because plaintiff had retained counsel and less drastic sanctions had not been imposed or considered.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Donna M. Ryu
JURISDICTION	United States District Court for the Northern District of California
DECIDED	December 8, 2025
DOCKET	24-cv-01352-DMR
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendants moved under Federal Rule of Civil Procedure 41(b) to dismiss the action with prejudice for failure to prosecute and because the trust could not appear pro se. The district court denied the motion.
STANDARD OF REVIEW	Dismissal for failure to prosecute under Federal Rule of Civil Procedure 41(b) is evaluated under the five Henderson factors: the public interest in expeditious resolution, the court's need to manage its docket, prejudice to defendants, the public policy favoring disposition on the merits, and the availability of less drastic sanctions.
PRECEDENTIAL VALUE	unpublished district court order

TOPICS

- motions to dismiss
- sanctions
- civil procedure
- insurance
- trusts

PRACTICE AREAS

civil procedure

insurance

trusts

commercial litigation

QUESTIONS PRESENTED

1. Whether the action should be dismissed with prejudice under Federal Rule of Civil Procedure 41(b) for failure to prosecute based on Plaintiff's violations of court orders and procedural rules and alleged delays.
2. Whether dismissal was warranted because Plaintiff, a trust, could not proceed without counsel.

HOLDINGS

1. Dismissal with prejudice was not warranted because all five Henderson factors favored non-dismissal.
2. Plaintiff's representation status did not justify dismissal because Plaintiff retained counsel before the motion was decided and had complied, albeit belatedly, with the court's direction to obtain counsel.

KEY QUOTATIONS

"Dismissal, however, is so harsh a penalty it should be imposed as a sanction only in extreme circumstances."
(at 2)

"As each of the Henderson factors favor non-dismissal, Defendants' motion is denied." (at 3)

FACTUAL BACKGROUND

Plaintiff filed the action in California state court, and Defendants removed it to federal court. Plaintiff's counsel moved to withdraw based on communication and representation problems, and the court ordered Plaintiff's trustees to appear personally at the withdrawal hearing. The trustees did not appear, but Plaintiff later retained new counsel before the court ruled on Defendants' Rule 41(b) motion.

PROCEDURAL HISTORY

Plaintiff initiated the action in California state court, and Defendants removed it to the Northern District of California. Plaintiff's counsel later moved to withdraw, and the court ordered the trustees to appear at the withdrawal hearing; neither appeared. After the court granted counsel's withdrawal and ordered the trustees to show cause, Defendants moved to dismiss under Rule 41(b). Plaintiff obtained new counsel before the motion was decided, and the court denied dismissal.

DISPOSITION

dismissed

CASES CITED

- Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986)
- Thompson v. Housing Authority of City of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986)

- Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998)
- Nealey v. Transportacion Maritima Mexicana, S.A., 662 F.2d 1275, 1279 (9th Cir. 1981)
- Malone v. U.S. Postal Service, 833 F.2d 128, 131 (9th Cir. 1987)
- Pagtalunan v. Galaza, 291 F.3d 639, 643 (9th Cir. 2002)
- Nevijel v. N. Coast Life Ins. Co., 651 F.2d 671, 674 (9th Cir. 1981)
- Govaerts v. Santa Clara Cnty. Dep't of Child Support Servs., No. C-08-00125 RMW, 2009 WL 890881, at *5 (N.D. Cal. Mar. 31, 2009)

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
 NANAK FOUNDATION TRUST DATED Case No. 24-cv-01352-DMR MAY 27, 2011, 8
 Plaintiff, ORDER DENYING DEFENDANTS' 9 MOTION TO DISMISS v. 10 Re: Dkt. No. 87
 LANDMARK AMERICAN INSURANCE 11 COMPANY, et al., 12 Defendants. 13 Defendants
 Landmark American Insurance Company, Ironshore Specialty Insurance 14 Company, Steadfast
 Insurance Company, and Aspen Specialty Insurance Company (collectively, 15 "Defendants")
 move to dismiss this action with prejudice pursuant to Federal Rule of Civil 16 Procedure 41(b).

[Docket No. 87 (Mot.).] Plaintiff Nanak Foundation Trust Dated May 27, 2011 17 filed an
 opposition (Docket No. 95 (Opp'n)), and Defendants filed a reply (Docket No. 100 (Reply)). 18
 Pursuant to Civil Local Rule 7-1(b), the court found this matter suitable for disposition 19 without
 oral argument and vacated the December 11, 2025 hearing. [Docket No. 102.]

Having 20 considered the parties' arguments, the relevant legal authority, and the record in this
 case, the court 21 denies Defendants' motion. 22 I. RELEVANT FACTUAL BACKGROUND 23
 Plaintiff initiated this action on August 14, 2023 in the Superior Court of California, County 24 of
 Alameda. [Docket No. 1-2.] Defendants were served on February 8 and 9, 2024 and removed 25
 the action to this court on March 6, 2024.

[Docket Nos. 1, 1-2, 1-5, 1-6, 1-7.] 26 On August 25, 2025, Horner Law Group, P.C. ("HLG")
 moved to withdraw as counsel for 27 Plaintiff, on grounds that (1) "[t]he attorney-client
 relationship..., as well as the trust and 1 inability to effectively litigate this case"; (2) "[o]ther
 conduct by [Plaintiff]... render[ed] it 2 unreasonably difficult for [HLG] to carry out the
 representation effectively;" and (3) "[t]here [wa]s 3 a lack effective communication between
 HLG... and [Plaintiff.]" [Docket No. 65-1 ¶ 2; see Docket 4 No. 65 at 2.]

HLG served a copy of the motion to withdraw on Plaintiff via U.S. mail and email. 5 [Dkt. No. 65-
 1 ¶ 4 & ECF p.4.] 6 On August 28, 2025, the court ordered that "Plaintiff's trustees, Gurcharn Virk
 and Dhian 7 Virk [together, the 'Trustees'], must appear personally at the October 9, 2025 hearing
 on the 8 motion." [Docket No. 67.]

The same day, HLG served a copy of the court's order on the Trustees 9 via email and UPS overnight delivery. [Docket No. 68.] 10 Neither Trustee appeared at the October 9 hearing. [Docket No. 86.] During the hearing, 11 HLG confirmed it had been in contact with the Trustees and had made it clear that the Trustees' in- 12 person appearance was required. Id. HLG further represented that the Trustees informed HLG that 13 they did not intend to appear at the hearing despite the court's order, and that they requested that 14 HLG ask the court for an additional 60 days to find new counsel.

Id. The court denied that request 15 and granted HLG's motion to withdraw on the condition that papers continue to be served on HLG 16 for forwarding purposes until November 10, 2025. Id. 17 On October 10, 2025, the court ordered the "Trustees to show cause in writing and explain 18 their intentional failure to appear in violation of a court order" by October 24, 2025.

[Docket No. 84 19 (OSC).] Gurcharn Virk responded to the OSC on October 23, 2025. [Docket No. 88.] Among 20 other things, Ms. Virk requested an additional 90 days to retain new counsel. Id. at 3. 21 Defendants filed the instant motion on October 17, 2025. Defendants seek dismissal of the 22 entire action with prejudice on grounds that (1) Plaintiff's violations of multiple court orders and 23 federal and local rules has unreasonably delayed the case and amounted to a failure to prosecute, 24 (2) Plaintiff may not appear pro se.

Mot. at 7–12. 25 On October 29, 2025, Peter Hadiaris entered an appearance on Plaintiff's behalf.¹ [Docket 26 27 1 Two days after Mr. Hadiaris filed his notice of appearance, Defendants filed objections to that 1 No. 90.] Plaintiff, represented by counsel, filed its opposition to Defendants' motion. 2 II. LEGAL STANDARD 3 Before dismissing a case for failure to prosecute, the court must examine the following 4 factors: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to 5 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring 6 disposition of cases on their merits and (5) the availability of less drastic sanctions." *Henderson v. 7 Duncan*, 779 F.2d 1421, 1423 (9th Cir.

1986) (citations omitted). "Dismissal, however, is so harsh 8 a penalty it should be imposed as a sanction only in extreme circumstances." *Thompson v. Hous. 9 Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986) (citation omitted).

Thus, dismissal 10 is appropriate "where at least four factors support dismissal... or where at least three factors 11 strongly support dismissal." *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998) 12 (cleaned up). 13 III. DISCUSSION 14 Dismissal is not warranted under the circumstances. 15 The first two factors—the public's interest in expeditious resolution of litigation and the 16 court's need to manage its docket—"relate[] to the efficient administration of judicial business for 17 the benefit of all litigants with cases pending." *Nealey v. Transportacion Maritima Mexicana*, S. 18 A., 662 F.2d 1275, 1279 (9th Cir.

1980) (cleaned up). Plaintiff's retention of counsel, even if 19 belated, indicates its intent to prosecute this action, and Plaintiff can reasonably be expected to 20 prosecute its case efficiently and expeditiously. These factors therefore weigh against dismissal. 21 The third factor, "the risk of prejudice to the defendants," also counsels against dismissal.

22 "In determining whether a defendant has been prejudiced, [courts] examine whether the plaintiff's 23 actions impair the defendant's ability to go to trial or threaten to interfere with the rightful decision 24 of the case." *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 131 (9th Cir. 1987). Defendants cite a 25 litany of Plaintiff's alleged violations of the Federal Rules of Civil Procedure and the court's Civil 26 Local Rules, as well as Plaintiff's delay in serving the complaint and failure to respond to discovery.

27 Mot. at 2–6, 9. The court finds that this conduct, while inappropriate, has not been so prejudicial to 1 more than seven months from now. Accordingly, this factor weighs against dismissal. 2 The fourth factor, "the public policy favoring disposition of cases on their merits," clearly 3 || weighs against dismissal. See *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir.

2002) ("Public 4 || policy favors disposition of cases on the merits. Thus, this factor weighs against dismissal."). 5 The last factor, "the availability of less drastic alternatives," also clearly weighs against 6 dismissal. "[L]ess drastic alternatives include allowing further amended complaints, allowing 7 additional time, or insisting that appellant associate experienced counsel." *Nevijel v. N. Coast Life* 8 || Ins.

Co., 651 F.2d 671, 674 (9th Cir. 1981). "Though there are a wide variety of sanctions short of 9 || dismissal available, the district court need not exhaust them all before finally dismissing a case." 10 || *Jd.* 11 Plaintiff has retained counsel as ordered, even if belatedly so.

Moreover, the court has not 12 || previously imposed, or even been asked to impose, less drastic sanctions. See *Govaerts v. Santa 13 Clara Cnty. Dep't of Child Support Servs.*, No. C-08-00125 RMW, 2009 WL 890881, at *5 (N.D. 14 || Cal. Mar. 31, 2009) ("Because the court has yet to explore any 'less drastic' measures for 3 15 shepherding this case along, the court denies [Defendants'] motion to dismiss pursuant to Rule 41(b) a 16 as premature.").

17 Iv. CONCLUSION 18 As each of the Henderson factors favor non-dismissal, Defendants' motion is denied. 19 IT IS SO ORDERED. 20 Dated: December 8, 2025 onna M. Ryu 22 Chief Magistrate Judge 23 24 25 26 27 28