

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

Paul Velgos v. Charter Aperitivo LLC

No. SACV 25-00648-SRM (KESx), United States District Court for the Central District of California (May 2, 2025)

SUMMARY

The United States District Court for the Central District of California issued an order to show cause why the action should not be dismissed for lack of prosecution. The court noted that the plaintiff had filed proof of service but had not taken action after the defendant's response deadline passed. The plaintiff was ordered to respond by May 7, 2025, or alternatively file a request for default, a compliant stipulation extending the response deadline, or a notice of voluntary dismissal.

CASE DETAILS

COURT	United States District Court for the Central District of California
WRITING FOR THE COURT	Serena R. Murillo
JURISDICTION	United States District Court for the Central District of California
DECIDED	May 2, 2025
DOCKET	SACV 25-00648-SRM (KESx)
DISPOSITION	other
PROCEDURAL POSTURE	The plaintiff filed a civil action, filed proof of service, and took no action after the defendant's deadline to respond to the complaint expired. The court issued an order to show cause why the action should not be dismissed for lack of prosecution.
PRECEDENTIAL VALUE	unpublished, nonprecedential district court order
PARTIES	Paul Velgos v. Charter Aperitivo LLC

TOPICS

- civil procedure
- default
- default judgment
- pleadings

PRACTICE AREAS

- civil procedure
- commercial litigation
- copyright litigation

QUESTIONS PRESENTED

1. Whether the plaintiff should be required to show cause why the action should not be dismissed for lack of prosecution after the defendant's response deadline expired and the plaintiff took no further action.
2. Whether a federal district court may dismiss an action sua sponte for failure to prosecute under Federal Rule of Civil Procedure 41(b).

HOLDINGS

1. A federal district court may, under appropriate circumstances, dismiss an action sua sponte for lack of prosecution under Federal Rule of Civil Procedure 41(b).
2. A plaintiff is responsible for moving a case toward a merits disposition and, when a defendant has not timely responded, should promptly pursue an extension, seek default and related remedies, or dismiss the action.

KEY QUOTATIONS

“[I]t is the plaintiff's responsibility to move a case toward a merits disposition.”

“The authority of a federal trial court to dismiss a plaintiff's action with prejudice because of his failure to prosecute cannot seriously be doubted.”

“It is within the inherent power of court to sua sponte dismiss a case for lack of prosecution.”

FACTUAL BACKGROUND

Paul Velgos filed the action and filed a proof of service on the defendant. The defendant's deadline to respond to the complaint passed, and the plaintiff did not seek entry of default, obtain a stipulation extending the response deadline, or otherwise advance the case.

PROCEDURAL HISTORY

After service of the complaint, the deadline for Charter Aperitivo LLC to respond passed without a response from the defendant or further action by the plaintiff. On the court's own motion, it ordered the plaintiff to show cause in writing by May 7, 2025, why the case should not be dismissed, while permitting a timely request for entry of default, a compliant stipulation extending the response deadline, or a voluntary dismissal as alternative responses.

DISPOSITION

other

CASES CITED

- Thomas v. Kernan, 2019 WL 8888200, at *1 (C.D. Cal. July 10, 2019)
- Morris v. Morgan Stanley & Co., 942 F.2d 648, 652 (9th Cir. 1991)
- Link v. Wabash R.R., 370 U.S. 626, 629 (1962)

- *Helis Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005)
- *Ash v. Cvetkov*, 739 F.2d 493, 496 (9th Cir. 1984)

OPINION

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA CIVIL MINUTES — GENERAL Case No. SACV 25-00648-SRM (KESx) Date May 2, 2025 Title Paul Velgos v. Charter Aperitivo LLC Present: The Honorable SERENA R. MURILLO, UNITED STATES DISTRICT JUDGE Melissa H. Kunig Not Reported Deputy Clerk Court Reporter Attorneys Present for Plaintiffs: Attorneys Present for Defendants: None Present None Present PROCEEDINGS: (IN CHAMBERS) ORDER TO SHOW CAUSE RE DISMISSAL FOR LACK OF PROSECUTION “[I]t is the plaintiff's responsibility to move a case toward a merits disposition.” *Thomas v. Kernan*, 2019 WL 8888200, at *1 (C.D.

Cal. July 10, 2019) (citing *Morris v. Morgan Stanley & Co.*, 942 F.2d 648, 652 (9th Cir. 1991)). That includes, where applicable, promptly (a) filing stipulations a defendant's time to respond to the complaint, (b) pursuing default and remedies under Federal Rule of Civil Procedure 55 when a defendant fails to timely respond to the complaint, or (c) dismissing a case the plaintiff has chosen not to pursue for any reason.

Here, Plaintiff has filed a proof of service, yet the deadline for Defendant to respond to the Complaint has passed and Plaintiff has taken no action. Accordingly, the court, on its own motion, hereby ORDERS Plaintiff to show cause in writing, no later than May 7, 2025, why this action should not be dismissed for lack of prosecution.

As an alternative to a written response by Plaintiff, the Court will consider as an appropriate response to this OSC the filing of one of the following on or before the above date: 1. Plaintiffs Request for Entry of Default as to all Defendants or Defendants' Answer(s), 2. A stipulation extending Defendants' time to respond to the Complaint that complies with Local Rule 8.3, or 3. notice of Voluntary Dismissal (Fed.

R. Civ. P. 41) as to a// Defendants. No oral argument of this matter will be heard unless ordered by the Court. The Order will submitted upon the filing of a timely and appropriate response. Failure to file a timely and appropriate response to this Order may result in dismissal without further notice or order from the court. Fed. R. Civ. P. 41(b); L. R. 41-6; *Link v. Wabash R.R.*, 370 U.S. 626, 629 (1962) (“The authority of a federal trial court to dismiss a plaintiff's action with prejudice because of his failure to prosecute cannot seriously be doubted.”); *Helis Canyon Pres.*

Council v. U.S. Forest Serv., 403 F.3d UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA CIVIL MINUTES — GENERAL Case No. SACV 25-00648-SRM (KESx) Date May 2, 2025 Title Paul Velgos v. Charter Aperitivo LLC 683, 689 (9th Cir. 2005)

("[C]ourts may dismiss under Rule 41(b) sua sponte, at least under certain circumstances."); *Ash v. Cvetkov*, 739 F.2d 493, 496 (9th Cir.

1984) ("It is within the inherent power of court to sua sponte dismiss a case for lack of prosecution."). Initial of Deputy Clerk = mku

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