

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Delgado v. Target Corporation

No. 1:24-cv-01396-KES-CDB (E.D. Cal. Feb. 26, 2025) · No. 1:24-cv-01396-KES-CDB · Decided February
26, 2025

OPINION

Delgado v. Target Corporation

PER CURIAM.

1 2 3 4 5 6 7 8

UNITED STATES DISTRICT COURT

9

EASTERN DISTRICT OF CALIFORNIA

10 11 VIRDIANA DELGADO, Case No. 1:24-cv-01396-KES-CDB 12 Plaintiff, ORDER
REQUIRING PLAINTIFF AND

COUNSEL TO SHOW CAUSE IN WRITING

13 v. WHY DAILY SANCTIONS SHOULD NOT

CONTINUE AND WHY FULL SANCTION

14 TARGET CORPORATION, AMOUNT SHOULD NOT BE IMPOSED AND
REPORTED TO STATE BAR

15 Defendant. (Doc. 10) 16

FINDINGS AND RECOMMENDATIONS TO

17 DISMISS THIS ACTION FOR PLAINTIFF'S

FAILURE TO PROSECUTE AND FAILURE

18 TO COMPLY WITH THE COURT'S ORDERS

19 14-Day Deadline 20 21 Background 22 Plaintiff Virdiana Delgado ("Plaintiff") initiated this
action with the filing of a complaint in 23 Kern County Superior Court, Case No. BCV-103400,
on October 9, 2024. (Doc. 1). Defendant 24 Target Corporation ("Defendant") removed the state
action to this Court on November 14, 2024. 25 (Id.). On November 14, 2024, the Court entered
the order setting the initial scheduling conference 26 for February 11, 2025, at 9:30 AM. (Doc. 2).
In its order, the parties were provided the email 27 address for the undersigned's courtroom
deputy for the parties to request and obtain Zoom 28 teleconference connection details. (Id. at 2).
Further, the courtroom deputy forwarded the Zoom 1 connection details via email to counsel for
the parties in advance of the scheduling conference. 2 The parties convened via Zoom
videoconference for a scheduling conference before the 3 undersigned on February 11, 2025.
Jason M. Avelar and Theresa W. Esqueda appeared on behalf 4 of Defendant. Plaintiff did not
appear either personally or through counsel. As such, the Court 5 was unable to schedule the case.

(Doc. 9). That same day, the Court issued an order to show cause 6 requiring Plaintiff to respond in writing within three days setting forth why sanctions should not be 7 imposed for her failure to appear at the scheduling conference. (Doc. 10). When Plaintiff failed to 8 timely respond to the show cause order, the Court entered an order imposing a daily \$100 sanction 9 to be assessed until Plaintiff responded to the show cause order. (Doc. 11) (citing inter alia Local 10 Rule 110).

11 Discussion 12 1. The Daily Sanctions

13 Because Plaintiff has failed to respond to the Court's February 11 order to show cause or 14 pay any of the accrued daily sanctions, the total accrued sanctions has reached an amount of \$900 15 on the date of this order (February 26, 2025). Pursuant to California law, "a court shall notify the 16 State Bar of any of the following: . . . (3) The imposition of any judicial sanctions against an 17 attorney, except sanctions for failure to make discovery or monetary sanctions of less than one 18 thousand dollars (\$1,000)." Cal. Bus. & Prof. Code § 6086.7(a)(3). 19 The Court shall afford Plaintiff and her counsel an opportunity to explain why the total 20 sanction amount already compiled as of this date should not be imposed in total, jointly and 21 severally against Plaintiff and her counsel. The Court may accept a partial reduction of the total 22 amount of sanctions based on a clear and convincing demonstration of good cause addressing the 23 failure to timely pay to the Clerk of Court the sanctions previously imposed. 24 To be clear to Plaintiff and her counsel, nothing in this order suspends the ongoing 25 imposition of the daily sanctions that began on February 18, 2025, and the daily sanctions will 26 continue to accrue during the pendency of the response period indicated in this order, until Plaintiff 27 and counsel comply with the February 11, 2025, order and this order. 28

2. Additional Sanctions 1 Local Rule 110,

corresponding with Federal Rule of Civil Procedure 11, provides that 2 "[f]ailure of counsel or of a party to comply with these Rules or with any order of the Court may 3 be grounds for imposition by the Court of any and all sanctions . . . within the inherent power of 4 the Court." E.D. Cal. Local Rule 110. The Court has the inherent power to control its docket and 5 may, in the exercise of that power, impose sanctions where appropriate, including dismissal of the 6 action. *Bautista v. Los Angeles Cnty.*, 216 F.3d 837, 841 (9th Cir. 2000). A court may dismiss an 7 action based on a party's failure to prosecute an action, obey a court order, or comply with local 8 rules. See, e.g., *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure 9 to comply with a court order to amend a complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128, 10 130-31 (9th Cir. 1987) (dismissal for failure to comply with a court order); *Henderson v. Duncan*, 11 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply with local 12 rules). 13 "In determining whether to dismiss an action for lack of prosecution, the district court is 14 required to weigh several factors: (1) the public's interest in expeditious resolution of litigation; 15 (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public 16 policy favoring disposition of cases on their merits; and (5) the availability of less drastic 17 sanctions." *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (internal quotation marks & 18

citation omitted). These factors guide a court in deciding what to do and are not conditions that 19 must be met in order for a court to take action. In *re* Phenylpropanolamine (PPA) Products 20 Liability Litigation, 460 F.3d 1217, 1226 (9th Cir. 2006) (citation omitted). 21 Here, Plaintiff has failed to comply with the Court's orders and Local Rules. Plaintiff 22 failed to appear for the scheduling conference, filed no response to the Court's subsequent order 23 to show cause, and has declined to pay monetary sanctions imposed. There are no other 24 reasonable alternatives available to address Plaintiff's failure to respond and otherwise obey this 25 Court's orders. Thus, the first and second factors—the expeditious resolution of litigation and the 26 Court's need to manage its docket—weigh in favor of dismissal. *Carey*, 856 F.2d at 1440. 27 The third factor, risk of prejudice to Defendant, also weighs fairly in favor of dismissal 28 since a presumption of injury arises from the occurrence of unreasonable delay in prosecuting an 1 action. See *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). This matter cannot proceed 2 further without Plaintiff's participation to prosecute the case and respond to the Court's orders. 3 See (Doc. 10). The presumption of injury holds given Plaintiff's unreasonable delay in 4 prosecuting this action. Thus, the third factor—a risk of prejudice to the Defendant—also weighs 5 in favor of dismissal. *Carey*, 856 F.2d at 1440. 6 The fourth factor usually weighs against dismissal because public policy favors 7 disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002). However, 8 “this factor lends little support to a party whose responsibility it is to move a case toward 9 disposition on the merits but whose conduct impedes progress in that direction.” In *re* PPA, 460 10 F.3d at 1228. Plaintiff has not moved this case forward toward disposition on the merits. She has 11 instead failed to comply with this Court's orders, the Federal Rules of Civil Procedure, and the 12 Local Rules, and is thus impeding the progress of this action. Therefore, the fourth factor — the 13 public policy favoring disposition of cases on their merits — also weighs in favor of dismissal. 14 *Carey*, 856 F.2d at 1440. 15 Finally, the Court's warning to a party that failure to obey the court's order will result in 16 dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262. 17 Here, the Court's order to show cause, requiring a response from Plaintiff, cautioned: “Failure to 18 comply with this order to show cause may result in the imposition of sanctions, up to and 19 including a recommendation to dismiss the case.” (Doc. 10 at 2) (emphasis in original). 20 Plaintiff was adequately forewarned that the failure to timely respond to the show cause order 21 could result in terminating sanctions. 22 Because Plaintiff has failed to comply with this Court's orders and Local Rules, and in so 23 doing is failing to prosecute his case, the undersigned will recommend dismissal of this action. 24 Conclusion, Order and Findings & Recommendation 25 Based on the foregoing, IT IS HEREBY ORDERED that on or before February 28, 2025, 26 Plaintiff Viridiana Delgado and counsel Michael Zaman shall show cause in writing why the 27 cumulative, previously imposed sanction and daily sanction amount set to reach \$900 as of the date 28 of this order shall not be jointly and severally imposed, why such sanction shall not be reported to 1 | the State Bar of California in the event Plaintiff and counsel fail to timely respond, and why daily 2 | sanctions shall not continue to

be imposed. 3 And it is FURTHER RECOMMENDED that the Court DISMISS this action
without 4 | prejudice for Plaintiff's failure to prosecute this action and to comply with the Court's
orders and 5 | Local Rules. See E.D. Cal. Local Rule 110. 6 These Findings and Recommendations
will be submitted to the United States District Judge 7 | assigned to this case, pursuant to the
provisions of 28 U.S.C. § 636(b)(1). Within 14 days after 8 | being served with a copy of these
Findings and Recommendations, a party may file written 9 | objections with the Court. Local Rule
304(b). The document should be captioned, "Objections to 10 | Magistrate Judge's Findings and
Recommendations" and shall not exceed 15 pages without leave 11 | of Court and good cause
shown. The Court will not consider exhibits attached to the Objections, 12 | but a party may refer
to exhibits in the record by CM/ECF document and page number. Any pages 13 | filed in excess of
the 15-page limitation may be disregarded by the District Judge when reviewing 14 | these
Findings and Recommendations under 28 U.S.C. § 636(b)(1)(C). A party's failure to file any 15 |
objections within the specified time may result in the waiver of certain rights on appeal. Wilkerson
16 | v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014). 17 | IT IS SO ORDERED. 'S | Dated: _
February 26, 2025 | Wr bo

19 UNITED STATES MAGISTRATE JUDGE

20 21 22 23 24 25 26 27 28