

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

Mimi Kim v. Ford Motor Company

Kim v. Ford Motor Co. · No. CV 25-4161 PVC · Decided September 9, 2025

OPINION

Mimi Kim v. Ford Motor Company

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA

10 11 MIMI KIM, Case No. CV 25-4161 PVC 12 Plaintiff,

MEMORANDUM OPINION AND

13 v. ORDER DISMISSING CASE WITH

PREJUDICE FOR FAILURE TO

14 FORD MOTOR COMPANY, PROSECUTE AND FOLLOW

COURT ORDERS

15 Defendant. 16

17 18 I.

19 INTRODUCTION

20 21 On December 2, 2024, Plaintiff filed this civil action against Defendant in Los 22 Angeles
County Superior Court, alleging breach of express warranty, breach of the 23 implied warranty of
merchantability, and violation of California Civil Code § 1793.2(b). 24 (Dkt. No. 1-1). On May 7,
2025, Defendant answered the Complaint. (Dkt. No. 1-2). On

25 May 8, 2025, Defendant removed the action to federal court, asserting that diversity of
26 citizenship exists between the parties and that the amount in controversy plausibly 27 exceeds
\$75,000. (Dkt. No. 1). The parties have consented to the jurisdiction of the 28 undersigned United
States Magistrate Judge. (Dkt. Nos. 4, 5). 1 On June 30, 2025, the Court issued a Scheduling
Order, which inter alia ordered 2 the parties to “file form ADR 01 requesting their joint selection
of an ADR procedure” no 3 later than July 14, 2025. (Dkt. No. 11 at 2). On August 1, 2025, the
Court reminded the 4 parties that their Form ADR 01 was overdue. (Dkt. No. 12). On August 12,
the Court 5 issued an Order to Show Cause why this action should not be dismissed for failure to
6 prosecute and follow court orders. (“OSC,” Dkt. No. 13). In the OSC, the Court gave 7 Plaintiff
until August 26, 2025, to either file Form ADR 01 or submit a signed declaration 8 explaining
why she is unable to do so. (Id.). The Court explicitly warned Plaintiff “that 9 failure to timely file
a response to this OSC will result in this action being dismissed with 10 prejudice for failure to

prosecute and follow court orders, pursuant to Federal Rule of 11 Civil Procedure 41(b).” (Id.). To date, Plaintiff has not responded to the OSC. 12 13 II.

14 DISCUSSION

15 16 Federal Rule of Civil Procedure 41(b) grants district courts the authority to dismiss 17 actions sua sponte for failure to prosecute or obey court orders. See *Link v. Wabash R.R.*, 18 370 U.S. 626, 629–31 (1962) (“The power to invoke this sanction is necessary in order to 19 prevent undue delays in the disposition of pending cases and to avoid congestion in the 20 calendars of the District Courts.”); accord *Arellano v. Hodge*, No. 314CV00590RBMJLB, 21 2024 WL 1298066, at *5 (S.D. Cal. Mar. 25, 2024) (“A district court may dismiss an 22 action under Rule 41(b) sua sponte.”); see also *Henderson v. Duncan*, 779 F.2d 1421, 23 1423 (9th Cir. 1986) (“The district court has the inherent power sua sponte to dismiss a 24 case for lack of prosecution.”). Except for limited exceptions—which do not apply 25 here—a dismissal for failure to prosecute in an adjudication on the merits. Fed. R. Civ. P. 26 41(b) (“[A] dismissal under this subdivision (b) and any dismissal not under this rule— 27 except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 28 19—operates as an adjudication on the merits.”); see *Stewart v. U.S. Bancorp*, 297 F.3d 1 953, 956 (9th Cir. 2002) (dismissal interpreted as an adjudication on the merits unless one 2 of the Rule 41(b) exceptions applies). 3 4 However, “because ... public policy favors disposition of cases on their merits,” 5 “dismissal is a harsh penalty and is to be imposed only in extreme circumstances.” 6 *Blixseth v. Credit Suisse*, 961 F.3d 1074, 1080 (9th Cir. 2020) (citation omitted). In 7 considering whether to dismiss an action for failure to prosecute, a court must weigh five 8 factors: “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s 9 need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy 10 favoring disposition of cases on their merits; and (5) the availability of less drastic 11 alternatives.” *Quintara Biosciences, Inc. v. Ruifeng Biztech, Inc.*, —F.4th—, No. 23- 12 16093, 2025 WL 2315671, at *6 (9th Cir. Aug. 12, 2025) (citation omitted). Here, these 13 factors favor dismissal. 14 15 A. Expeditious Resolution and The Court’s Need to Manage Its Docket 16 17 The first two factors, the public’s interest in expeditious resolution of litigation and 18 the Court’s need to manage its docket, favor dismissal. Despite the Court warning 19 Plaintiff that failure to file the required ADR 01 form would result in a dismissal with 20 prejudice, she has neither filed the Form nor advised the Court as to why she is unable to 21 do so. Plaintiff’s conduct hinders the Court’s ability to move this case toward disposition 22 and indicates that Plaintiff does not intend to litigate this action diligently. See *Ash v. 23 Cvetkov*, 739 F.2d 493, 496-97 (9th Cir. 1984) (affirming dismissal of action for failure to 24 prosecute where plaintiff’s failure to respond to a court order resulted in month-long 25 delay). As a result, the first two factors favor dismissal. 26 27 28 1 B. The Risk of Prejudice to Defendants 2 3 The third factor, prejudice to Defendant, also favors dismissal. “Unreasonable 4 delay is the foundation upon which a court may presume prejudice.” *Southwest Marine 5 Inc. v. Danzig*, 217 F.3d 1128, 1138 (9th Cir. 2000). The risk of prejudice to an opposing 6 party is related to the reason given for the

failure to prosecute an action. See *Pagtalunan*, 7 291 F.3d at 642. Where a party offers a poor excuse for failing to comply with a court's 8 order, the prejudice to the opposing party is sufficient to favor dismissal. See *Yourish v. 9 Cal. Amplifier*, 191 F.3d 983, 991-92 (9th Cir. 1999). Here, Plaintiff has not offered any 10 excuse for failing to comply with the Court's Orders. This case is at an impasse entirely 11 of Plaintiff's own creation. Accordingly, the risk of prejudice to Defendant favors 12 dismissal. 13 14 C. Less Drastic Alternatives 15 16 The fifth factor, the availability of less drastic alternatives, also favors dismissal. 17 The Court attempted to avoid outright dismissal of this action by first reminding Plaintiff 18 that the Form was overdue and then by issuing an OSC to afford Plaintiff an opportunity 19 to either file the requisite Form or provide an explanation for her delay. Plaintiff has 20 failed to comply with the Court's Orders. Accordingly, this factor also strongly favors 21 dismissal of this action. See *Henderson*, 779 F.2d at 1424 ("The district court need not 22 exhaust every sanction short of dismissal before finally dismissing a case[] but must 23 explore possible and meaningful alternatives."). 24 25 D. Public Policy Favoring Disposition on The Merits 26 27 The fourth factor, the public policy favoring the disposition of cases on their 28 merits, ordinarily weighs against dismissal. However, it is the responsibility of the 1 || moving party to prosecute the action at a reasonable pace and to refrain from dilatory and 2 || evasive tactics. See *Morris v. Morgan Stanley & Co.*, 942 F.2d 648, 652 (9th Cir. 1991). 3 || Plaintiff has not discharged this responsibility despite having ample time and opportunity 4 || to do so. Under these circumstances, the public policy favoring the resolution of disputes 5 || on the merits does not outweigh Plaintiff's failure to file required documents. 6 7 Despite the Court's Orders expressly requiring her to do so, Plaintiff has neither 8 || filed Form ADR 01 nor provided any explanation for her dilatory behavior. Therefore, 9 || this action will be dismissed with prejudice under Rule 41(b) for failure to prosecute and 10 || obey court orders. 11 12 Il.

13 CONCLUSION

14 15 According, IT IS ORDERED that Judgment be entered DISMISSING THIS 16 || ACTION WITH PREJUDICE for failure to prosecute and obey court orders. 17 18 19 || Dated: September 9, 2025 hl

21 PEDRO V.CASTILLO-

UNITED STATES MAGISTRATE JUDGE

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