

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Jim Koleszar and Needa Parts
Manufacturing, Inc.,

Plaintiffs,

v.

Dorman Products, Inc.,

Defendant.

Case No. 17-11523

Judith E. Levy
United States District Judge

Mag. Judge Stephanie Dawkins
Davis

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**OPINION AND ORDER DISMISSING CASE
WITHOUT PREJUDICE FOR FAILURE TO PROSECUTE**

Plaintiffs filed a complaint in this matter on May 12, 2017. (Dkt. 1.) Defendant was served on May 12, 2017. (Dkt. 2.) On September 18, 2017, the Court ordered plaintiff to show cause why the case should not be dismissed for failure to prosecute, since there had been no activity in the case. (Dkt. 5.) Plaintiffs were to respond by October 10, 2017. (*Id.*)

Under Rule 41(b) of the Federal Rules of Civil Procedure, “[i]f the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it,” and “[u]nless the dismissal order states otherwise, a dismissal under

this subdivision (b) . . . operates as an adjudication on the merits.” Fed. R. Civ. P. 41(b). Under Local Rule 41.2, “when . . . the parties have taken no action for a reasonable time, the court may, on its own motion after reasonable notice or on application of a party, enter an order dismissing or remanding the case unless good cause is shown.” E. D. Mich. LR 41.2.

“Prior notice, or the lack thereof, is [] a key consideration when determining whether a district court abuses its discretion in dismissing a case pursuant to Rule 41(b).” *Stough v. Mayville Cmty. Sch.*, 138 F.3d 612, 615 (6th Cir. 1998). The deadline to respond to the Court’s show-cause order passed more than a week ago, and plaintiff still has not responded. Plaintiff has had more than ample time but failed to proceed. *Kemp v. Robinson*, 262 F. App’x 687, 692 (6th Cir. 2007) (district court may give fair warning by “issu[ing] a show-cause order requiring [plaintiff] to explain why his case should not be dismissed with prejudice for failing to move for default judgment”).

Accordingly, pursuant to Fed. R. Civ. P. 41(b) and E. D. Mich. LR. 41.2, this case is DISMISSED WITHOUT PREJUDICE for failure to

prosecute.

IT IS SO ORDERED.

Dated: October 19, 2017
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on October 19, 2017.

s/Shawna Burns
SHAWNA BURNS
Case Manager