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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Kathleen Ann Nelson,)

No. CV-13-2519-PHX-LOA

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Plaintiff,)

ORDER

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vs.)

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Target Corporation, a foreign)

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corporation,)

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Defendant.)

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This case arises on Plaintiff Kathleen Ann Nelson’s Motion Continuing the Case on the Inactive Calendar,¹ filed on April 7, 2014, asserting that, due to her “severely limited mobility,” she is “unable to drive more than a few (3-4 miles) [sic] and can only walk short distances,” and cannot “defend [her] positions in the amended complaint.” (Doc. 14 at 1) Defendant Target Corporation opposes the Motion on several grounds. (Doc. 15) As an accommodation to Plaintiff, however, Target indicates it is amenable to Plaintiff’s participation via telephone at the upcoming Rule 16 scheduling conference set for April 18, 2014. (*Id.* at 3)

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I. Background

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This *pro se* tort action was initially filed in the Maricopa County Superior Court on November 15, 2013, nearly five months ago, and then removed to this District Court on December 11, 2013. (Doc. 1) To date, the Court has not conducted the Rule 16 scheduling

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¹ Unlike the Maricopa County Superior Court, the District Court of Arizona does not have an inactive calendar.

1 conference because Plaintiff, who is unrepresented, has moved for its continuance and,
2 according to defense counsel, Plaintiff had not fully cooperated by participating in a Rule
3 26(f) case management conference via in person or by telephone. (Docs. 9, 15)

4 Federal Rule of Civil Procedure 26(f) and the Court's January 22, 2014 Order
5 mandate that the parties "[m]eet and confer, at least **14 days**, before the scheduling
6 conference as required by Rule 26(f), Fed.R.Civ.P." and submit a joint Case Management
7 Report "not less than **five calendar days**," before the Rule 16 scheduling conference. (Doc.
8 8 at 5-7) (emphasis in original). A Rule 16 scheduling conference was initially scheduled
9 for February 20, 2014, but it was continued to Friday, April 18, 2014 at 10:30 a.m., because
10 Plaintiff filed a continuance motion on February 13, 2014, claiming she received the Court's
11 January 22, 2014 Order on February 12, 2014, which was five days after the February 7,
12 2014 deadline for Plaintiff to file an amended complaint. (Docs. 8, 10-11) Plaintiff claimed
13 the U.S. Postal Service "misdelayed the packet of orders to a non-resident neighbor" and
14 "Plaintiff is limited in mobility and ability to drive to retain counsel[.]" (Doc. 9) The
15 amended complaint was due on or before Friday, February 7, 2014 to prevent dismissal of
16 this action without prejudice, but it was not filed until March 13, 2014 yet the action was not
17 dismissed as the Court credited as true Plaintiff's explanation for the untimely filing.

18 **II. Duty to Prosecute Case**

19 A plaintiff has the general duty to prosecute her case. *See Ponce v. Arpaio*, 2007 WL
20 1077135, at *1 (D. Ariz. April 6, 2007) (citing *Fidelity Philadelphia Trust Co. v. Pioche*
21 *Mines Consolidated, Inc.*, 587 F.2d 27, 29 (9th Cir. 1978)). Rule 41(b), Fed.R.Civ.P., permits
22 involuntary dismissal of an action "[i]f the plaintiff fails to prosecute or to comply with [the
23 federal procedural] rules or a court order." *See also Link v. Wabash Railroad Co.*, 370 U.S.
24 626, 629-30 (1962) (district court's authority to dismiss for lack of prosecution is necessary
25 to prevent undue delays in the disposition of pending cases and avoid congestion in district
26 court calendars); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992) (district court may
27 dismiss action for failure to comply with any order of the court). "The courts have read this
28 rule to require prosecution with 'reasonable diligence' if a plaintiff is to avoid dismissal."

1 *Anderson v. Air West, Inc.*, 542 F.2d 522, 524 (9th Cir. 1976) (citations omitted). “[T]he
2 failure to prosecute diligently is sufficient by itself to justify a dismissal, even in the absence
3 of a showing of actual prejudice to the defendant from the failure.” *Id.* (citations omitted).
4 “The law presumes injury from unreasonable delay.” *Id.* A rebuttable presumption of
5 prejudice to defendants arises when there is a failure to prosecute diligently. *In re Eisen*, 31
6 F.3d 1447, 1452-53 (9th Cir. 1994). This presumption may be rebutted where a plaintiff
7 proffers an excuse for delay. *See Lauino v. Syringa Gen. Hosp.*, 279 F.3d 750, 753 (9th Cir.
8 2002). A district court has the inherent power to dismiss a case *sua sponte* for lack of
9 prosecution. *See Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986) (citing *Ash v.*
10 *Cvetkov*, 739 F.2d 493, 496 (9th Cir. 1984) (citing *Link*, 370 U.S. at 630). In *Link*, the
11 Supreme Court recognized that a federal district court has the inherent power to dismiss a
12 case *sua sponte* for failure to prosecute, even though the language of Rule 41(b) of the
13 Federal Rules of Civil Procedure appears to require a motion from a party. 370 U.S. at 633;
14 *see also Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005)
15 (district court may dismiss under Rule 41(b) for failure to prosecute or comply with rules of
16 civil procedure or the court’s orders). A dismissal pursuant to Rule 41(b) is committed to the
17 sound discretion of the district court. *See Link*, 370 U.S. at 633.

18 **III. Discussion**

19 The Court has been extremely patient and accommodating with *pro se* Plaintiff
20 without any adverse consequence in dealing with multiple issues to date, *e.g.*, her
21 unauthorized practice of law, the real-party-in-interest issue, her filing an untimely amended
22 complaint, and the additional delay in conducting a case management conference. While
23 complaints filed by *pro se* litigants are held to “less stringent standards than formal pleadings
24 drafted by lawyers[,]” *Haines v. Kerner*, 404 U.S. 519, 520 (1972), *pro se* litigants must
25 comply with all procedural and local rules. *See McNeil v. United States*, 508 U.S. 106, 113
26 (1993) (“we have never suggested that procedural rules in ordinary civil litigation should be
27 interpreted so as to excuse mistakes by those who proceed without counsel.”); *Carter v.*
28 *Commissioner of Internal Revenue*, 784 F.2d 1006, 1008 (9th Cir. 1986); *King v. Atiyeh*, 814

1 F.2d 56, 567 (9th Cir. 1987) (“Pro se litigants must follow the same rules of procedure that
2 govern other litigants.”); *Albra v. Advan, Inc.*, 490 F.3d 826, 829 (11th Cir. 2007)
3 (explaining that “we are to give liberal construction to the pleadings of pro se litigants,” but
4 that “we nevertheless have required them to conform to procedural rules”) (citation omitted);
5 Local Rule (“LRCiv”) 83.1(1). A *pro se* litigant’s status does not entitle *pro se* litigants to
6 special treatment not given to represented parties, nor does it exempt them from compliance
7 with the Federal Rule of Civil Procedure, Local Rules, or the orders of this Court. *See Brock*
8 *v. Hendershott*, 840 F.2d 339, 342-43 (6th Cir. 1988) (“[w]hen a person . . . chooses to
9 represent h[er]self, [s]he should expect no special treatment which prefers h[er] over others
10 who are represented by attorneys.”). “There is no authority for the contention that *pro se*
11 litigants are entitled to a more lenient application of substantive law.” *Wolfel v. United States*,
12 711 F.2d 66, 67 (6th Cir. 1983). “In fact, it is the very essence of the equal protection
13 guarantee of the Fifth and Fourteenth Amendments that ‘once an indigent . . . is brought
14 within the ambit [of the court’s power], . . . the protections and procedures required [by law]
15 to be extended to all other litigants may not be conditioned upon his financial means.’” *Id.*
16 (quoting *Lecates v. Justice of the Peace Court No. 4*, 637 F.2d 898, 908 (3rd Cir. 1980)
17 (citations omitted).

18 The Court recognizes that the ruling on the pending motion may be viewed by some
19 as harsh. Nevertheless, Plaintiff voluntarily elected to file this action and represent herself.
20 A federal judge is duty-bound to remain neutral, treat individuals or legal entities fairly,
21 impartially, and equally, regardless of economic status. *See United States v. Petersen*, 2009
22 WL 3428896, at *1 (D. Minn. Oct. 16, 2009) (A federal judge “[i]s duty bound to administer
23 justice in a fair and impartial manner to all parties equally—in short, to serve as a neutral
24 arbiter between the opposing parties.”) (citing federal judicial oath at 28 U.S.C. § 453). In
25 *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980), the Supreme Court recognized that “[the
26 Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil
27 and criminal cases.” “This requirement of neutrality in adjudicative proceedings” serves dual
28 interests of equal importance, as “it preserves both the appearance and reality of fairness,

1 generating the feeling, so important to a popular government, that justice has been done, . .
2 . by ensuring that no person will be deprived of h[er] interests in the absence of a proceeding
3 in which [s]he may present h[er] case with assurance that the arbiter is not predisposed to
4 find against h[er].” *Id.* (citations omitted).

5 In the exercise of the Court’s wide discretion to control and fairly manage its heavy
6 caseload, Plaintiff’s motion will be denied.

7 Based on the foregoing,

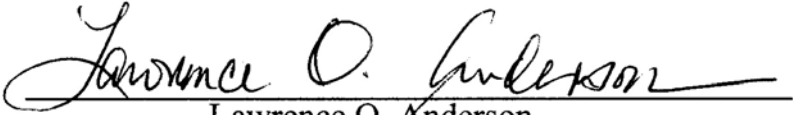
8 **IT IS ORDERED** that Plaintiff Kathleen Ann Nelson’s Motion Continuing the Case
9 on the Inactive Calendar, doc. 14, is **DENIED**. If Plaintiff fails to appear at the April 18,
10 2014 scheduling conference, either physically or telephonically, this action will be dismissed
11 without prejudice and without further notice for failure to prosecute.

12 On the Court’s own motion,

13 If Plaintiff chooses to appear telephonically at the April 18, 2014 scheduling
14 conference, Plaintiff shall notify the Court no later than 12:00 p.m. on April 17, 2014 that she
15 intends to make a telephonic appearance by calling the undersigned’s Judicial Assistant at
16 (602) 322-7620.

17 **IT IS FURTHER ORDERED** that Plaintiff Kathleen Ann Nelson may appear at the
18 April 18, 2014 scheduling conference by telephone by promptly calling the Court at (602)
19 322-7620 at 10:30 a.m.

20 Dated this 9th day of April, 2014.

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23 Lawrence O. Anderson
24 United States Magistrate Judge
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