

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 16-7876 PA (GJSx)	Date	July 26, 2017
Title	Deborah Van Horn v. Omnicom Group Health and Welfare Benefit Plan		

Present: The Honorable		PERCY ANDERSON, UNITED STATES DISTRICT JUDGE	
Kamilla Sali-Suleyman		N/A	
Deputy Clerk		Court Reporter	
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:	
None		None	
Tape No.			

Proceedings: IN CHAMBERS—ORDER

This is an ERISA action involving a disputed claim for medical benefits brought by plaintiff Deborah Van Horn (“Plaintiff”) against defendant Omnicom Group Health and Welfare Plan (“Defendant”). On February 24, 2017, the Court issued an Order requiring the parties to file the administrative record by March 27, 2017, to file opening trial briefs by June 19, 2017, and to file underlined findings of fact and conclusions of law by July 24, 2017. (Docket No. 22.) To date, despite the passage of these deadlines, the parties have failed to file any of the required documents.

The Court may dismiss with prejudice an action or claim sua sponte if “the plaintiff fails to prosecute or to comply with the [Federal Rules of Civil Procedure] or a court order.” See Fed. R. Civ. Proc. 41(b); Link v. Wabash R.R. Co., 370 U.S. 626, 629–30, 82 S. Ct. 1386, 1388, 8 L. Ed. 2d 734 (1962) (dismissal for failure to prosecute); Yourish v. Cal. Amplifier, 191 F.3d 983, 987–88 (9th Cir. 1999) (dismissal for failure to comply with court order). This inherent power supports the orderly and expeditious disposition of cases. See Link, 370 U.S. at 629–30, 82 S. Ct. 1386, 1388–89, 8 L. Ed. 2d 734; Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992); Yourish v. Cal. Amplifier, 191 F.3d 983, 987–88 (9th Cir. 1999).

In Henderson v. Duncan, the Ninth Circuit set forth five factors for a district court to consider before resorting to the penalty of dismissal: “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits and (5) the availability of less drastic sanctions.” 779 F.2d 1421, 1423 (9th Cir. 1986). Dismissal is appropriate “where at least four factors support dismissal, or where at least three factors ‘strongly’ support dismissal.” Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998) (internal citations omitted) (citing Ferdik, 963 F.2d at 1263). Cases involving sua sponte dismissal merit special focus on the fifth Henderson factor. Id.

Here, in assessing the first Henderson factor, the public’s interest in expeditious resolution of litigation will be satisfied by a dismissal. See Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002) (citing Yourish, 191 F.3d at 990 (public’s interest in expeditious resolution of litigation always favors

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 16-7876 PA (GJSx)	Date	July 26, 2017
Title	Deborah Van Horn v. Omnicom Group Health and Welfare Benefit Plan		

dismissal)). Relatedly, with respect to the second factor, the Court's need to manage its docket will be served by dismissal. See id.

The third Henderson factor at least marginally favors dismissal. Defendant may be further prejudiced unless the complaint is dismissed. See Yourish, 191 F.3d at 991; Pagtalunan, 291 F.3d at 642 (holding that failure to timely amend risks prejudice and can justify dismissal).

In considering the fourth and fifth Henderson factors, the Court notes that Plaintiff has taken no action whatsoever since filing a Notice of Selection of Mediator on March 10, 2017. (Docket No. 24.) It therefore appears that Plaintiff has abandoned her efforts to obtain a judgment on the merits. Additionally, the Court intends to dismiss this action without prejudice. Accordingly, the fifth Henderson factor favors dismissal because the Court has adopted the "less-drastic" sanction of dismissal without prejudice. See McHenry v. Renne, 84 F.3d 1172, 1179 (9th Cir. 1996) (district court should first consider less drastic alternatives to dismissal with prejudice).

For the foregoing reasons, the Court dismisses this action without prejudice for failure to comply with a Court order and for lack of prosecution. See Fed. R. Civ. P. 41(b); see also Yourish, 191 F.3d at 986–88; Ferdik, 963 F.2d at 1260.

IT IS SO ORDERED.