

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 16-8628 PA(SKx) Date July 19, 2017

Title Tart Optical Enterprises, LLC v. Yao Hsuan Wang, et al.

Present: The Honorable PERCY ANDERSON, UNITED STATES DISTRICT JUDGE

Kamilla Sali-Suleyman

None

N/A

Deputy Clerk

Court Reporter

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

None

None

Proceedings: In Chambers - Order

Plaintiff Tart Optical Enterprises, LLC (“Plaintiff”) filed a Complaint in this Court on November 18, 2016. The Court issued a series of orders to show cause why this action should not be dismissed for lack of prosecution on March 17, 2017, May 17, 2017, and June 20, 2017, as a result of Plaintiff’s failure to timely serve some of the defendants named in the Complaint. Plaintiff filed a Notice of Dismissal without prejudice of defendants Yao Husan Wang, Wei Cheng Lin, China Vision Co. Ltd., and Tart Optical Asia Co. Ltd. on May 25, 2017. Plaintiff and defendant TVR Online Services, LLC filed a Joint Stipulation for Permanent Injunction and Stipulation to Dismiss on June 20, 2017. The Court entered an order granting that Stipulation on July 5, 2017. Plaintiff did not otherwise respond to the June 20, 2017 order to show cause, and has made no efforts to diligently prosecute its claims against defendants Hot Ice Optical Company and TVR OPT Co. Ltd.

It is well established that a district court has authority to dismiss a plaintiff’s action because of his or her failure to prosecute or to comply with court orders. See Fed. R. Civ. P. 41(b); Link v. Wabash Railroad Co., 370 U.S. 626, 629–30, 82 S. Ct. 1386, 8 L. Ed. 2d 734 (1962) (holding that a court’s authority to dismiss for lack of prosecution is necessary to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars of the district courts); Ferdick v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992) (holding that a district court may dismiss an action for failure to comply with any order of the court).

In determining whether to dismiss a case for failure to prosecute or failure to comply with court orders, a district court should consider five factors: (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. See In re Eisen, 31 F.3d 1447, 1451 (9th Cir. 1994) (failure to prosecute); Ferdik, 963 F.2d at 1260–61 (failure to comply with court orders).

Taking all of these factors into account, dismissal for failure to prosecute and for failure to comply with the Court’s Orders is appropriate. Such a dismissal, however, should not be entered unless a plaintiff has been notified that dismissal is imminent. See W. Coast Theater Corp. v. City of Portland,

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897 F.2d 1519, 1523 (9th Cir. 1990). In each of the three orders to show cause, as well as the Court’s March 31, 2017, and April 5, 2017 order, the Court cautioned Plaintiff that if it failed to respond, this case may be dismissed. Here, the Court will adopt the less drastic sanction of dismissing the claims against the defendants Plaintiff has not diligently pursued without prejudice. Accordingly, Plaintiff’s claims against defendants Hot Ice Optical Company and TVR OPT Co. Ltd. are dismissed without prejudice for failure to prosecute and for failure to comply with the Court’s Orders.

IT IS SO ORDERED.