

1
2
3
4
5
6

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

7 MANGIA MEDIA, INC., AVCO
8 INDUSTRIES, INC.,

9 Plaintiffs,

10 v.

11 UNIVERSITY PIPELINE, INC., THOMAS
12 UNGER,

13 Defendants.

Case No. 12-cv-01142 NC

**REFERRAL FOR
REASSIGNMENT WITH
RECOMMENDATION TO
DISMISS FOR FAILURE TO
PROSECUTE**

14
15 In this action for breach of contract and bad faith, plaintiffs have failed to respond
16 to the Court's order to show cause for failure to prosecute. Because the parties have not
17 consented to the jurisdiction of a magistrate judge under 28 U.S.C. § 636(c), this Court
18 does not have authority to make a dispositive ruling in this case. Accordingly, the Court
19 orders this case to be REASSIGNED to a District Judge.

20 Finding that plaintiffs have failed to respond to Court orders and failed to appear at
21 a case management conference, this Court RECOMMENDS that the District Court
22 dismiss this action under Federal Rule of Civil Procedure 41(b).

23 **I. BACKGROUND**

24 This action was transferred from the United States District Court, for the Eastern
25 District of New York, to this Court on March 12, 2012. Order Transferring Case, Dkt.
26 No. 29. This Court scheduled a case management conference for June 20, 2012, and
27 ordered the parties to file a joint case management conference statement by June 13,
28 2012. Scheduling Order, Dkt. No. 31. The Court also ordered the parties to consent or

Case No. 12-cv-01142 NC
REFERRAL FOR REASSIGNMENT
WITH REC. DISMISS

1 decline to proceeding before a magistrate judge under 28 U.S.C. § 636. Standing Order,
2 Dkt. No. 31-1. As no case management statement was filed and no party filed a consent
3 or declination to the jurisdiction of a magistrate judge, the Court vacated the June 20 case
4 management conference and issued an order to show cause requiring plaintiffs to file a
5 status report by July 5, 2012. *See* Order to Show Cause, Dkt. No. 36. The Court warned
6 plaintiffs that failure to comply with the order would result in case dismissal. *See id.* The
7 Court also continued the case management conference to July 11. *Id.*

8 Plaintiffs have now failed to respond to the order to show cause, failed to appear at
9 the case management conference, and failed to file a case management statement.

10 **II. DISCUSSION**

11 An action may be dismissed under Federal Rule of Civil Procedure 41(b) for
12 failure to prosecute or to comply with court orders. *See Hells Canyon Preservation*
13 *Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) (recognizing that a district
14 court may dismiss an action in accordance with Federal Rule of Civil Procedure 41(b) sua
15 sponte for a plaintiff's failure to prosecute or comply with a court order); *see also Ferdik*
16 *v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992) (a district court may dismiss an action
17 for failure to comply with any order of the court). In “determining whether to dismiss a
18 case for failure to comply with a court order, the district court must weigh five factors
19 including: “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s
20 need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
21 favoring disposition of cases on their merits; and (5) the availability of less drastic
22 alternatives.” *Ferdik*, 963 F.2d at 1260-61 (quoting *Thompson v. Housing Auth.*, 782
23 F.2d 829, 831 (9th Cir. 1986)).

24 Here, plaintiffs failed to comply with Court orders and deadlines, failed to respond
25 to the order to show cause, failed to consent or decline to the jurisdiction of a magistrate
26 judge, failed to appear at the July 11 case management conference, and failed to file any
27 case management statement. *See* Min. Order, Dkt. No. 38. The Court finds that the
28 *Ferdik* factors weigh in favor of dismissal.

1 **III. CONCLUSION**

2 Because plaintiffs have yet to consent to the jurisdiction of a magistrate judge, the
3 Court **ORDERS** the Clerk of Court to reassign this case to a district court judge. As
4 plaintiffs have failed to prosecute this action and have failed to comply with numerous
5 court orders, this Court **RECOMMENDS** that the District Court **DISMISS** the action
6 under Federal Rule of Civil Procedure Rule 41(b). The parties may object to this
7 recommendation within fourteen days of the filing date of this order. **FED. R. CIV. P.**
8 **72(b).**

9 **IT IS SO ORDERED.**

10
11 **DATED: July 12, 2012**

12 
13 **NATHANAEL M. COUSINS**
14 **United States Magistrate Judge**