

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

TUCKER DURNFORD,

Plaintiff,

v.

MUSCLEPHARM CORP.,

Defendant.

Case No. 15-cv-00413-HSG

**ORDER OF DISMISSAL**

On December 18, 2015, the Court granted Defendant MusclePharm Corp.'s motion to dismiss Plaintiff Tucker Durnford's first amended class action complaint. Dkt. No. 52. The Court granted Plaintiff leave to file an amended complaint within 21 days. *Id.* The deadline for Plaintiff to file his second amended complaint passed, and on January 20, 2016, the Court issued an order to show cause why the case should not be dismissed for failure to prosecute. Dkt. No. 53. In his January 22, 2016, response to the Court's order to show cause, Plaintiff indicated that he will not amend his complaint and intends to appeal the Court's dismissal of his first amended complaint. Dkt. No. 53.

When a plaintiff has declined amendment of his complaint in favor of appealing the dismissal, the court should dismiss the action with prejudice under Federal Rule of Civil Procedure 12(b)(6). See *Edwards v. Marin Park, Inc.*, 356 F.3d 1058 (9th Cir. 2004).


United States District Court  
Northern District of California

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Accordingly, this action is DISMISSED with prejudice under Rule 12(b)(6). The Clerk shall enter judgment in favor of Defendant. Both parties shall bear their own costs of suit.

**IT IS SO ORDERED.**

Dated: 2/10/2016

  
HAYWOOD S. GILLIAM, JR.  
United States District Judge