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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

EMILIO DEVERA,  
Plaintiff,  
v.  
WESTERN PROGRESSIVE, LLC, et al.,  
Defendants.

Case No. [3:18-cv-02423-JD](#)

**ORDER DISMISSING CASE**

Re: Dkt. No. 26

This case is related to an earlier action, *Devera v. Western Progressive, LLC, et al.*, No. 3:17-cv-01969-JD, which the Court dismissed for failure to prosecute after pro se plaintiff Devera did not appear for a scheduled ADR phone call and did not respond to two orders to show cause. The complaint in this case is virtually the same as the one filed in the other action.

An ADR phone conference in this case was scheduled for May 16, 2018, and Devera was served with notice of the conference more than two weeks in advance. Dkt. No. 13-1. Devera did not appear. The Court ordered Devera to show cause in writing by June 22, 2018 and warned Devera that if he failed to respond, the case would be subject to dismissal for failure to prosecute. Dkt. No. 26. As of July 9, 2018, the Court has not received any response.

The Court has considered the five factors set forth in *Malone v. United States Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987). The Court finds that notwithstanding the public policy favoring the disposition of actions on their merits, the Court's need to manage its docket and the public interest in the expeditious resolution of the litigation require dismissal of this action. There is no appropriate less drastic sanction in light of plaintiff's failure to respond to the order to show

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cause. This action is dismissed with prejudice pursuant to Fed. R. Civ. Pro. 41(b) for plaintiff's failure to prosecute.

**IT IS SO ORDERED.**

Dated: July 9, 2018



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JAMES DONATO  
United States District Judge