

United States District Court
Northern District of California

ROBERT H. O'CONNOR,

Plaintiff,

v.

CAPITAL ONE, N.A.,

Defendant.

Case No.: CV 14-00656-KAW

ORDER DISMISSING CASE WITH
PREJUDICE

On January 8, 2014, Plaintiff Robert H. O'Connor, proceeding pro se, filed this case in Small Claims Court in the County of San Francisco against Defendant Capital One consisting of a single cause of action for violation of the Fair Debt Collections Practices Act. On February 12, 2014, the action was removed to federal court.

On February 19, 2014, Defendant filed a motion to dismiss the complaint. (Def.'s Mot., Dkt. No. 8.)

Pursuant to Civil Local Rule 7-3, Plaintiff's opposition was due on or before March 10, 2014. Plaintiff did not file an opposition. On March 31, 2014, the Court issued an order requiring Plaintiff to show cause why his case should not be dismissed for failure to prosecute, and to file either an opposition to the motion to dismiss or a statement of non-opposition. Plaintiff did not file a response to the OSC or file an opposition by the April 21, 2014 deadline.

Federal Rule of Civil Procedure 41(b) permits the involuntary dismissal of an action or claim for a plaintiff's failure to prosecute. See *Link v. Wabash R. Co.*, 370 U.S. 626, 630-31 (1962) ("authority of a court to dismiss sua sponte for lack of prosecution has generally been considered an 'inherent power'"). Unless otherwise stated, a dismissal under Rule 41(b) "operates as an adjudication on the merits." Fed. R. Civ. P. 41(b).

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At the May 15, 2014 hearing on the motion to dismiss, Plaintiff explained that he did not file an opposition to the motion because he thought that he had dismissed this case without prejudice in state court. He did not explain his failure to respond the Court's order to show cause.

Accordingly, the Court GRANTS the motion to dismiss as unopposed, and dismisses this action with prejudice for failure to prosecute. The Clerk of the Court shall close this case.

IT IS SO ORDERED.

Dated: May 16, 2014


KANDIS A. WESTMORE
United States Magistrate Judge