

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARIE E. HORN,

Plaintiff,

v.

NORTHROP GRUMMAN RETIREMENT  
PLAN B and NORTHROP GRUMMAN  
BENEFIT PLAN ADMINISTRATIVE  
COMMITTEE,

Defendants.

No. C 14-0909 CW

ORDER DISMISSING  
FOR FAILURE TO  
PROSECUTE; and  
DENYING AS MOOT  
DEFENDANTS' MOTION  
TO DISMISS (Docket  
No. 36)

Plaintiff Marie E. Horn brings this Employee Retirement Income Security Act (ERISA) claim against Defendants Northrop Grumman Retirement Plan B and the Northrop Grumman Benefit Plan Administrative Committee (collectively, Defendants). Defendants move to dismiss the complaint for failure to state a claim upon which relief may be granted, pursuant to Federal Rule of Civil Procedure 12(b)(6).

BACKGROUND

This Court granted Defendants' prior motion to dismiss, and granted Plaintiff leave to amend her complaint. Order (Docket No. 25). Plaintiff filed her amended complaint on November 18, 2014. (Docket No. 31). Subsequently, the parties stipulated to, and the Court granted, an extension of time for Defendants to file a renewed motion to dismiss. Stip. (Docket No. 34); Order (Docket No. 35).

1 Defendants made their renewed motion to dismiss on December  
2 19, 2014. (Docket No. 36). The stipulated deadlines provided  
3 that Plaintiff's response was due on January 2, 2015; however, as  
4 of this writing, Plaintiff has filed no opposition to the renewed  
5 motion to dismiss.

6 DISCUSSION

7 Under Federal Rule of Civil Procedure 41(b), a district court  
8 may dismiss a case if "the plaintiff fails to prosecute or to  
9 comply with these rules or a court order." See also Hells Canyon  
10 Pres. Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir.  
11 2005) ("courts may dismiss under Rule 41(b) sua sponte, at least  
12 under certain circumstances").

13 On November 28, 2014, Plaintiff entered a stipulation by  
14 which she agreed that her response to any renewed motion to  
15 dismiss would be due on January 2, 2015. On December 1, 2014, the  
16 Court issued an Order granting the Stipulation. Defendants timely  
17 renewed their motion to dismiss; however, although it is more than  
18 two weeks after her deadline to respond, Plaintiff has filed no  
19 response to the motion. Therefore, pursuant to Rule 41(b), the  
20 Court hereby dismisses Plaintiff's amended complaint for failure  
21 to prosecute and for failure to comply with a court order.  
22 Accordingly, Defendants' motion to dismiss under Rule 12(b)(6) is  
23 denied as moot.

24 Rule 41 also provides, "Unless the dismissal order states  
25 otherwise, a dismissal under this subdivision (b) . . . operates  
26 as an adjudication on the merits." Here, because public policy  
27 favors disposition of cases on their merits, see, e.g., Dahl v.  
28

1 City of Huntington Beach, 84 F.3d 363, 366 (9th Cir. 1996), the  
2 dismissal shall not operate as an adjudication on the merits.

3  
4 IT IS SO ORDERED.

5  
6 Dated: January 21, 2015

  
CLAUDIA WILKEN  
United States District Judge