

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ADVANCED ENGINEERING SOLUTION,)
INC., a California corporation,)
)
Plaintiff,)
v.)
)
PACCAR, INC., a Delaware corporation;)
KENWORTH TRUCK COMPANY, an)
unknown entity; KALYPSO, INC., a)
corporation; PARAMETRIC TECHNOLOGY)
CORPORATION, a Massachusetts corporation;)
ANDREW TIMM, an individual; JORDAN)
REYNOLDS, an individual; and DOES 1)
through 100, inclusive,)
)
Defendants.)

Case No.: 5:12-CV-00986-LHK

ORDER DISMISSING DEFENDANT
PACCAR, INC.

On July 23, 2012, this Court issued an Order to Show Cause Why this Case Should Not Be Dismissed For Failure to Prosecute. *See* ECF No. 33 (“OSC”). Plaintiff Advanced Engineering Solution, Inc. (“Plaintiff”) filed a response to the OSC requesting: (1) dismissal of this case without prejudice due to Plaintiff’s financial inability to pursue litigation; or, alternatively, (2) transfer of this case to the United States District Court, Western Division of Texas, Austin Division (“Texas Court”), where Plaintiff is the defendant in a case Plaintiff alleges is related to the instant suit; or, alternatively, (3) that the Court allow Plaintiff 60 additional days to seek and obtain representation. *See* ECF No. 36 (“Response”) at 2.

1 A hearing regarding the OSC was held on August 30, 2012. Following the hearing, the
2 Court issued an order (“Order”) dismissing, without prejudice, Plaintiffs’ claims against
3 Defendants Kenworth Truck Company, Kalypso Inc., Parametric Technology Corporation, Andrew
4 Timm pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i).¹ See ECF No. 43. The Court,
5 however, declined to dismiss Plaintiff’s claims against Defendant Paccar, Inc. (“Paccar”) for
6 reasons set forth in the Order. *Id.*

7 The Court additionally ordered Plaintiff to retain new counsel by October 3, 2012. The
8 Court further ordered that, by October 3, 2012, new counsel must: (1) file a notice of appearance;
9 (2) file a status report advising the Court of how Plaintiff intends to proceed with the litigation; and
10 (3) meet and confer with counsel for Paccar pursuant to Federal Rule of Civil Procedure 26(f). *Id.*
11 The Court stated that if these tasks were not accomplished by October 3, 2012, Plaintiff’s claims
12 against Paccar would be dismissed with prejudice. *Id.* As of today, October 15, 2012, Plaintiff has
13 failed to meet any of these deadlines. For example, the Court has not received a notice of
14 appearance from Plaintiff’s new counsel. Furthermore, Plaintiff has not filed a status report
15 advising the Court of how Plaintiff intends to proceed with the litigation. Plaintiff also has not
16 informed the Court that Plaintiff has met and conferred with counsel for Paccar pursuant to Federal
17 Rule of Civil Procedure 26(f). Accordingly, Plaintiff’s claims against Paccar are DISMISSED
18 WITH PREJUDICE. The case management conference set for October 24, 2012, at 2:00 p.m is
19 hereby VACATED. The Clerk shall close the file.

20 **IT IS SO ORDERED.**

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22 Dated: October 15, 2012

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LUCY H. KOH
United States District Judge

¹ Rule 41(a)(1)(A)(i) provides that a “plaintiff may dismiss an action without a court order by filing... a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.