

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**DENISE HICKINGBOTOTM**

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**CIVIL ACTION**

**VERSUS**

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**NO. 18-2836**

**JOHNSON & JOHNSON, ET AL.**

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**SECTION "L" (5)**

**ORDER**

Before the Court is Defendants' motion to dismiss Plaintiff's claims for failure to prosecute, R. Doc. 24. Plaintiff failed to respond. Plaintiff was ordered to appear before this Court on April 3, 2019 to show cause why this case should not be dismissed for failure to prosecute. Plaintiff did not appear.

Under Federal Rule of Civil Procedure 41(b), a district court may dismiss an action based on the plaintiff's failure to prosecute or comply with an order of the court. *Martinez v. Johnson*, 104 F.3d 769, 771 (5th Cir. 1997). "The power to invoke this sanction is necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars of the District Courts." *Link v. Wabash Railroad. Co.*, 370 U.S. 626, 629-30 30 (1962).

Because "dismissal with prejudice is an extreme sanction that deprives the litigant of the opportunity to pursue his claim," a dismissal under Rule 41(b) proper only when (1) there is a clear record of delay or contumacious conduct by the plaintiff, and (2) lesser sanctions would not serve the interests of justice. *Callip v. Harris Cnty. Child Welfare Dep't*, 757 F.2d 1513, 1519 (5th Cir. 1985). "The right of self-representation does not exempt a party from compliance with relevant rules of procedural and substantive law." *Birl v. Estelle*, 660 F.2d 592, 593 (5th Cir. 1981). Indeed,

a pro se plaintiff bears the burden of establishing excusable neglect, which requires more than mere ignorance. *Id.*

Acting *pro se*, Plaintiff has failed to accept or respond to discovery propounded by Defendants and has failed to communicate with counsel for Defendants. Plaintiff did not oppose Defendants' motion and did not appear before this Court.

Accordingly, as stated on the record at the April 3, 2019 show cause hearing, R. Doc. 26, **IT IS ORDERED** that this case is **DISMISSED WITH PREJUDICE**, for failure to prosecute.

New Orleans, Louisiana, this 18th day of April, 2019.

  
UNITED STATES DISTRICT JUDGE

CC: Denise Hickingbottom  
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Metairie, Louisiana 70001