

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Daniel C Flint,

Plaintiff,

Case No. 16-cv-11093

v.

Judith E. Levy

United States District Judge

Infusion Brands, Inc.,

Mag. Judge Anthony P. Patti

Defendant.

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**OPINION AND ORDER DISMISSING CASE WITH PREJUDICE
FOR FAILURE TO PROSECUTE**

Plaintiff filed a complaint on March 25, 2016. (Dkt. 1.) He filed a motion for default on December 7, 2016, which the Court denied for failure to follow proper procedure. (Dkt. 16.) On March 22, 2017, the Court ordered plaintiff to show cause why the Case should not be dismissed for failure to prosecute, since there had been no activity in the case. (Dkt. 17.) Plaintiff was to respond by April 5, 2017. (*Id.*)

Under Rule 41(b) of the Federal Rules of Civil Procedure, “[i]f the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it,”

and “[u]nless the dismissal order states otherwise, a dismissal under this subdivision (b) . . . operates as an adjudication on the merits.” Fed. R. Civ. P. 41(b). Under Local Rule 41.2, “when . . . the parties have taken no action for a reasonable time, the court may, on its own motion after reasonable notice or on application of a party, enter an order dismissing or remanding the case unless good cause is shown.” E. D. Mich. LR 41.2.

“Prior notice, or the lack thereof, is [] a key consideration when determining whether a district court abuses its discretion in dismissing a case pursuant to Rule 41(b).” *Stough v. Mayville Cmty. Sch.*, 138 F.3d 612, 615 (6th Cir. 1998). It has been nearly two weeks since the deadline to respond to the Court’s show-cause order, and plaintiff still has not responded. Plaintiff has had more than ample time but failed to proceed. *Kemp v. Robinson*, 262 F. App’x 687, 692 (6th Cir. 2007) (district court may give fair warning by “issu[ing] a show-cause order requiring [plaintiff] to explain why his case should not be dismissed with prejudice for failing to move for default judgment”).

Accordingly, pursuant to Fed. R. Civ. P. 41(b) and E. D. Mich. LR. 41.2, this case is DISMISSED WITH PREJUDICE for failure to prosecute.

IT IS SO ORDERED.

Dated: April 25, 2017
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on April 25, 2017.

s/Felicia M. Moses
FELICIA M. MOSES
Case Manager