IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

TIARA MATINA, Plaintiff, v. PERFORMANT RECOVERY, INC., Defendant.	MEMORANDUM DECISION AND ORDER DISMISSING CASE Case No. 2:13-cv-619-BCW Magistrate Judge Brooke Wells

The parties have consented having United States Magistrate Judge Brooke C. Wells conduct all proceedings in this case, including entry of final judgment, with appeal to the United States Court of Appeals for the Tenth Circuit.[1] Before the Court is Defendant Performant Recovery's Motion to Dismiss *with Prejudice*.[2] For the reasons set forth below, the Court will grant Defendant's Motion and dismiss Plaintiff's case.

Plaintiff filed the Complaint in this case on July 1, 2013.[3] On January 14, 2014, the undersigned granted Attorney Joshua Trigsted's Amended Motion to Withdraw as counsel or Plaintiff Tiara Martin.[4] In the Court's Order Granting Mr. Trigsted's Motion to Withdraw, the Court stated:

> With regard to Plaintiff's continued representation, unless a Notice of Substitution of Counsel has been filed, within twenty-one (21) days after entry of this order, or within the time otherwise required by the court, the unrepresented party shall file a notice of appearance. A party who fails to file such a Notice of Substitution of Counsel or Notice of Appearance may be subject to sanction….including but not limited to dismissal or default judgment.[5]

[1] Docket no. 12.
[2] Docket no. 20.
[3] Docket no. 2.
[4] Docket no.
[5] See docket no. 19.

To date, Plaintiff failed to file either a Notice of Substitution of Counsel or a Notice of *pro se* Appearance. Based upon Plaintiff's failure to follow the Court's Order or otherwise prosecute the case, Defendant filed the instant Motion to Dismiss. To date, Plaintiff has also failed to file an opposition or response to the Defendant's Motion. On March 20, 2014, the Court issued an Order to Show Cause which gave Plaintiff fifteen days in which to inform the Court of the case and any intentions to proceed.[6] Plaintiff failed to respond to the Court's Order to Show Cause.

Federal Rule of Civil Procedure 41(b) states: "If 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."[7] Further, DUCivR 41-2 of the United States District Court for the District of Utah Rules of Practice provides

> "[t]he court may issue at any time an order to show cause why a case should not be dismissed for lack of prosecution. If good cause is not shown within the time prescribed by the order to show cause, the court may enter an order of dismissal with or without prejudice, as the court deems proper."[8]

Here, it is clear Plaintiff has failed to prosecute this case and follow the Court's orders. In fact, upon review of the docket, Plaintiff has taken no action in the case other than consenting to Magistrate Judge Jurisdiction[9] and filing an Attorney Planning Report.[10] Therefore, because of the non-activity and Plaintiff's lack of prosecution of this case and failure to respond to the Court's Order to Show Cause, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, and Local Rule DUCivR 41-2, the Court Grants Defendant's Motion to Dismiss with prejudice.

[6] Docket no. 21.
[7] Fed. R. Civ. P. 41(b).
[8] DUCivR 41-2.
[9] Docket no. 12.
[10] Docket no. 13.

CONCLUSION & ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that Defendant's Motion to Dismiss *with prejudice*[11] is GRANTED. Each party is to bear their own fees and costs. Therefore, the Court DENIES Defendant's request for attorneys' fees and costs. Accordingly, the Court directs the Clerk of Court to close this case.

DATED this 14 April 2014.

Brooke C. Wells
United States Magistrate Judge

[11] Docket no. 20.