

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
CIVIL MINUTES—GENERAL

# JS-6

Case No. **EDCV 15-224 JGB-DTBx**

Date **May 18, 2016**

Title ***Chris Kohler v. CLK, Inc. et al.***

Present: The Honorable **JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE**

**MAYNOR GALVEZ**

Deputy Clerk

**Not Reported**

Court Reporter

Attorney(s) Present for Plaintiff(s):

None Present

Attorney(s) Present for Defendant(s):

None Present

**Proceedings: Order (1) DISMISSING Action for Lack of Prosecution; and (2) VACATING the May 23, 2016 Hearing (IN CHAMBERS)**

On March 1, 2016, Defendant CLK, Inc. (“Defendant”) filed a Motion for Partial Summary Judgment as to Plaintiff Chris Kohler’s (“Plaintiff”) ADA claims for injunctive relief. (Doc. No. 28.) Defendant contends it has remedied all alleged ADA barriers, thereby mooting Plaintiff’s federal claims. Because Plaintiff’s ADA claims are the only federal causes of action in the Complaint, Defendant’s Motion also requests that the Court decline to exercise supplemental jurisdiction over the remaining state law claims.

Plaintiff filed an Opposition on March 7, 2016, in which he asserted that Defendant’s Motion improperly relied on testimony of an undesignated expert, and that Plaintiff had not had an opportunity to inspect the property to determine if the barriers were in fact remedied. (Doc. No. 30.)

On March 28, 2016, the Court held a hearing on the Motion. (See Transcript of March 28, 2016 Hearing (“Transcript”), Doc. No. 38.) Counsel for both parties appeared. The Court admonished Defendant for failing to designate its expert by the Court-ordered deadline, and determined the just course of action would be to give Plaintiff an opportunity to inspect the property, depose Defendant’s expert and properly respond to the Motion. Accordingly, the Court struck the Opposition and the Reply, extended the discovery cut-off deadline to April 18, 2016, and ordered Plaintiff to file an opposition no later than May 2, 2016. The Court noted that if discovery could not be completed by the new deadline, the parties must ask for an extension.

Remarkably, as of the date of this order, Plaintiff has not filed an opposition, nor any other document explaining Plaintiff's failure to file an opposition. Defendant filed a Reply on May 9, 2016, and a declaration from Defense counsel stating that Plaintiff has made no effort to inspect the property, and has not deposed Defendant's expert. (Doc. No. 43.)

Federal courts have the inherent power to achieve the orderly and expeditious disposition of cases by dismissing actions pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute or to comply with court orders. Link v. Wabash R.R. Co., 370 U.S. 626, 629-30 (1962); Hells Canyon Pres. Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005) ("the consensus among our sister circuits, with which we agree, is that courts may dismiss under Rule 41(b) sua sponte"). A district court must weigh five factors to determine whether to dismiss a case for lack of prosecution: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring the disposition of cases on their merits; and (5) the availability of less drastic sanctions." In re Eisen, 31 F.3d 1447, 1451 (9th Cir. 1994). Where a party offers a poor excuse for failing to comply with a court's order, the prejudice to the opposing party is sufficient to favor dismissal. See Yourish v. California Amplifier, 191 F.3d 983, 991-92 (9th Cir. 1999). "The failure to prosecute diligently is sufficient by itself to justify a dismissal, even in the absence of a showing of actual prejudice to the defendant." Anderson v. Air West, Inc., 542 F.2d 522, 524 (9th Cir. 1976).

Here, Plaintiff was given an extension to depose Defendant's expert, inspect the subject property, and file an opposition to Defendant's Motion. To date, Plaintiff has not filed an opposition, nor a request for an extension of time. Plaintiff's failure to prosecute his ADA claims is sufficient to justify dismissal of those claims. Anderson, 542 F.2d at 524. Moreover, the public's interest in expeditious resolution of litigation always favors dismissal. Yourish, 191 F.3d at 990. The Court's need to manage its own docket also favors dismissal here, because the Court will not waste its resources litigating Plaintiff's case for him. The Court already gave Plaintiff an extension to investigate and address whether Defendant had in fact remedied the ADA barriers alleged in the Complaint. Less drastic sanctions are simply not available. While the public policy favoring disposition of the case on its merits will always cut against dismissal for failure to prosecute, the four other factors strongly support it in this case.

Accordingly, the Court finds that Plaintiff has abandoned his ADA claims and DISMISSES them from the Complaint. See Hall v. Placer Cty. Sheriff's Dep't, No. 2:10-CV-1152-JAM-EFB, 2013 WL 6086897, at \*3 (E.D. Cal. Nov. 19, 2013) (recommending that the action be dismissed and the defendants' motion for summary judgment denied as moot because the plaintiff failed to file an opposition to the motion, notwithstanding numerous opportunities to do so).

The Court's original jurisdiction over this action was based on federal question jurisdiction pursuant to Plaintiff's ADA claims. (Complaint ¶¶ 3, 4.) District courts may decline to exercise supplemental jurisdiction over a state law claim if the district court has dismissed all claims over which it has original jurisdiction. 28 U.S.C. § 1367(c)(3). The Supreme Court has held that supplemental jurisdiction is discretionary and that "needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties." United Mine Workers of America v. Gibbs, 383 U.S. 715, 726 (1966).

Having found that Plaintiff has abandoned his ADA claims, and in the absence of any other basis for federal jurisdiction, the Court declines to exercise supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(c)(3). See Duarte v. M & L Bros. Pharmacy Inc., No. 2:14-CV-00029-ODW EX, 2014 WL 5663921, at \*3 (C.D. Cal. Nov. 4, 2014) (dismissing plaintiff's state law claims after finding ADA claim was moot); Kohler v. Bed Bath & Beyond of California, LLC, No. CV 11-4451 RSWL SPX, 2012 WL 3018320, at \*9 (C.D. Cal. July 23, 2012) (declining to exercise supplemental jurisdiction over state law claims after granting defendant's motion for summary judgment on plaintiff's ADA claims, because "to adjudicate the remaining state claims would require knowledge of the California Building Code, the California Health & Safety Code, and other state laws and regulations. A state court would be a better venue for these issues."); Paulick v. Starwood Hotels & Resorts Worldwide, Inc., No. C-10-01919 JCS, 2012 WL 2990760, at \*15 (N.D. Cal. July 20, 2012) (dismissing state law claims after granting summary judgment on ADA claims); Hubbard v. 7-Eleven, Inc., 433 F.Supp.2d 1134, 1150 (S.D.Cal.2006) (granting summary judgment on ADA claims and dismissing remaining claims without prejudice).

For the reasons stated above, Plaintiff's Complaint is DISMISSED. Defendant's Motion for Partial Summary Judgment is DENIED AS MOOT. The Clerk is directed to close the case.

**IT IS SO ORDERED.**