

APPENDIX A

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BAHMAN KHODAYARI,

Plaintiff,

v.

CITY OF LOS ANGELES, et al,

Defendants.

Case No. 2:16-CV-02810-RHW

**ORDER GRANTING MOTION TO
DISMISS PURSUANT TO FRCP 41**

Before the Court is Defendants' Motion to Dismiss. ECF NO. 84. Plaintiff filed a response.¹ ECF No. 85. The Court has reviewed the filings and the docket as a whole and is fully informed.

FED. RIV. C. P. 41(b) allows for an involuntary dismissal of a plaintiff's case if the plaintiff "fails to prosecute or to comply with these rules or a court order." While the Court has the inherent power to dismiss an action, the Court has also looked to the multiple factors it must consider prior to dismissal, including the public's interest in expeditious resolution, the court's need to manage its docket, the risk of prejudice to the defendants, the public policy favoring disposition of their merits, and the availability of less drastic sanctions. *See Dahl v. City of Huntington Beach*, 84 F.3d 363, 366 (9th Cir. 1996). The Court determines dismissal is appropriate.

¹ The Court notes that Plaintiff's response has been filed under the wrong heading on the docket.

1 Plaintiff has failed to comply with numerous court rules and the Orders
2 found at ECF Nos. 27 and 37. *See* ECF No. 86. Plaintiff has not provided any
3 discovery to Defendants, including initial disclosures under FED. R. CIV. P. 26(a).
4 Based on the repeated pattern of disregard for discovery rules and court orders, the
5 Court granted Defendants' Motion in Limine to exclude all non-disclosed
6 evidence. *Id.* This left Plaintiff unable to put forward any evidence to present in
7 support of his case. With no evidence left for presentation, the Court finds good
8 cause to **GRANT** Defendants' Motion to Dismiss.

9 **Accordingly, IT IS HEREBY ORDERED:**

- 10 1. Defendant's Motion to Dismiss, ECF No. 84, is **GRANTED**.
11 2. This matter is **DISMISSED with prejudice**.
12 3. The trial set on **February 6, 2018** is **STRICKEN**.

13 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
14 Order, forward copies to counsel and Plaintiff and close the file.

15 **DATED** this 29th day of January, 2018.

16
17 *s/Robert H. Whaley*
18 **ROBERT H. WHALEY**
19 Senior United States District Judge
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NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 23 2019

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

BAHMAN KHODAYARI,

No. 18-55247

Plaintiff-Appellant,

D.C. No. 2:16-cv-02810-RHW-
JEM

v.

CITY OF LOS ANGELES; et al.,

MEMORANDUM*

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
Robert H. Whaley, District Judge, Presiding

Submitted May 21, 2019**

Before: THOMAS, Chief Judge, FRIEDLAND and BENNETT, Circuit Judges.

Bahman Khodayari appeals pro se from the district court's order dismissing for failure to comply with discovery obligations his 42 U.S.C. § 1983 action alleging federal and state law claims. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *Yourish v. California Amplifier*,

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

191 F.3d 983, 986 (9th Cir. 1999) (dismissal under Fed. R. Civ. P. 41(b)); *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1105 (9th Cir. 2001) (imposition of discovery sanctions under Fed. R. Civ. P. 37(c)(1)). We affirm.

The district court did not abuse its discretion in dismissing under Rule 41(b) because Khodayari failed to comply with discovery obligations under Federal Rule of Civil Procedure 26. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (setting forth the five factors to be weighed when considering dismissal for failure to comply with a court order, and stating that, although preferred, the district court is not required to make explicit findings; this court may review the record independently to determine if the district court has abused its discretion).

The district court did not abuse its discretion by granting defendants' motion under Rule 37(c)(1) to exclude evidence which had not been produced during the course of discovery because Khodayari failed to demonstrate the harmlessness of the non-production. *See Yeti by Molly, Ltd.*, 259 F.3d at 1105-1106 (recognizing that the district court has "wide latitude" in imposing sanctions under Rule 37(c)(1) and the burden of demonstrating the harmlessness of the delayed or non-production rests on the party facing sanctions).

AFFIRMED.

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)

Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - ▶ A material point of fact or law was overlooked in the decision;
 - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- See Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
 - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Jean Green, Senior Publications Coordinator);
 - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 10. Bill of Costs

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form10instructions.pdf>

9th Cir. Case Number(s)

Case Name

The Clerk is requested to award costs to (*party name(s)*):

I swear under penalty of perjury that the copies for which costs are requested were actually and necessarily produced, and that the requested costs were actually expended.

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

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APPENDIX C

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

AUG 29 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

BAHMAN KHODAYARI,

Plaintiff-Appellant,

v.

CITY OF LOS ANGELES; et al.,

Defendants-Appellees.

No. 18-55247

D.C. No. 2:16-cv-02810-RHW-
JEM

Central District of California,
Los Angeles

ORDER

Before: THOMAS, Chief Judge, FRIEDLAND and BENNETT, Circuit Judges.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Khodayari's petition for rehearing en banc (Docket Entry No. 26) is denied.

No further filings will be entertained in this closed case.