FILED

AUG 6 2026

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL OF THE NINTH CIRCUIT

In re: BABAK KAZEMI SHIRAZI, Debtor.	BAP No. CC-26-1031-GCN Bk. No. 8:23-bk-10805-SC
SEYED JAFAR JAFARI, Appellant, v. BABAK KAZEMI SHIRAZI, Appellee.	Adv. No. 8:23-ap-01109-SC **MEMORANDUM**[*]

Appeal from the United States Bankruptcy Court
for the Central District of California
Scott C. Clarkson, Bankruptcy Judge, Presiding

Before: GAN, CORBIT, and NIEMANN, Bankruptcy Judges.

INTRODUCTION

Seyed Jafar Jafari appeals the bankruptcy court's order dismissing with prejudice his adversary complaint against chapter 7[1] debtor, Babak Kazemi Shirazi, which sought to establish a nondischargeable claim under

---

[*] This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have, *see* Fed. R. App. P. 32.1, it has no precedential value, *see* 9th Cir. BAP Rule 8024-1.

[1] Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532, all "Rule" references are to the Federal Rules of Bankruptcy Procedure, all "Civil Rule" references are to the Federal Rules of Civil Procedure, and all "Local Rule" or "LBR" references are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California.

§ 523(a)(2)(A). Despite multiple warnings from the court that continued noncompliance would result in dismissal, Jafari repeatedly failed to comply with court-ordered obligations. Ultimately, Shirazi sought dismissal based on Jafari's failure to prosecute. The court granted the motion, dismissing the proceeding with prejudice.

The bankruptcy court correctly applied the law, and Jafari does not demonstrate an abuse of discretion. Accordingly, we AFFIRM.

FACTS[2]

A. The adversary proceeding

Shirazi filed a chapter 7 petition in April 2023. Jafari filed an adversary complaint under § 523(a)(2)(A) based on alleged fraud involving two loans. The bankruptcy court conducted a status hearing in February 2024 and issued a scheduling order.

The bankruptcy court approved a stipulation which set a discovery deadline for December 1, 2024, a deadline to file the joint pre-trial stipulation ("JPTS") by December 26, 2024, and a pretrial conference for January 9, 2025.

Neither party appeared for the pre-trial conference, and neither party filed anything prior to the hearing. The bankruptcy court continued the pretrial conference and issued an order to show cause (the "First OSC")

---

[2] We exercise our discretion to take judicial notice of documents electronically filed in the adversary proceeding. *See Atwood v. Chase Manhattan Mortg. Co. (In re Atwood)*, 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

why the case should not be dismissed for failure to prosecute. In response, counsel for Jafari, Nicholas Nassif, acknowledged that he failed to file the JPTS and stated that he mistakenly calendared the hearing. Shirazi filed a response stating that he could not provide a list of exhibits and witnesses because his attorney's house had burned down. The bankruptcy court continued the pretrial conference to June 12, 2025.

About an hour before the continued pretrial conference, Jafari filed the JPTS and a declaration from Nassif explaining that he again mis-calendared the hearing and did not realize he was required to file the JPTS.

At the continued pretrial conference, the court reviewed the JPTS and rejected the parties' contention that they needed to conduct more depositions. The court directed Nassif to amend the JPTS in the manner discussed at the hearing, and it set a trial for July 31, 2025. The court approved the amended JPTS on June 26, 2025.

Three weeks before trial, Jafari filed a motion to modify the order approving the JPTS, and a week later he filed a "Unilateral Modified Pretrial Statement" which purported to modify the court-approved JPTS by adding six new witnesses and twenty-seven new exhibits. Jafari also sought to change several disputed facts and add back the provision that "depositions still need to be taken," which the court expressly rejected when it approved the JPTS.

At the hearing on Jafari's motion to modify, the court confirmed that Jafari had not previously disclosed any of the exhibits or witnesses he proposed to add. The court denied the motion because allowing Jafari to use the exhibits or call the witnesses would be prejudicial to Shirazi. But the court also noted that Shirazi had filed an expert witness report, dated March 19, 2024, which he had not disclosed until June 2025. Based on the failures by both parties to properly disclose exhibits, the court decided to vacate the trial date and reset deadlines.

The bankruptcy court entered a new scheduling order setting the following deadlines: (1) July 30, 2025, for disclosure of expert witnesses and reports; (2) October 30, 2025, for completion of discovery; (3) September 15, 2025, for Jafari to file a unified statement of objections after meeting and conferring regarding objections to evidence; and (4) November 20, 2025, for Jafari to file the new JPTS. The court also set a pretrial conference for December 11, 2025, at which time it would set the new trial date. In the scheduling order, the court ordered:

> If Plaintiff fails to comply with the deadlines or requirements set forth herein, Defendant shall have the right to move this Court for dismissal of the action, with prejudice, on the grounds of Plaintiff's failure to prosecute. If Plaintiff misses one more deadline, Plaintiff is cautioned that this Court will dismiss this action.
>
> If any party fails to comply with any provision contained herein, or as set forth in the local rules and this Court's procedures . . . , the offending party may be subject to monetary and/or nonmonetary sanctions.

After the hearing on Jafari's motion to modify, the bankruptcy court issued an order to show cause (the "Second OSC") why Jafari's counsel Nassif and Shiraz's counsel Hindin should not be sanctioned $5,000 for their failures to comply with Local Rules pertaining to filing the JPTS. The parties filed responses, and the court continued the hearing on the Second OSC to December 11, 2025, the date of the new pretrial conference. In his declaration filed in response to the Second OSC, Nassif stated that he would respond to Shirazi's attorney's meet-and-confer letters "within a week" and all outstanding obligations would be met no later than September 13, 2025.

On August 21, 2025, Jafari filed a notice of association of counsel, indicating that attorney Evan Frank would appear as co-counsel for Jafari. Ten days later, Jafari filed a Substitution of Attorney, replacing Nassif with Frank as his attorney of record.

B. The motion to dismiss

On September 17, 2025, Sharazi filed a motion to dismiss the adversary complaint. He noted three new deadlines missed by Jafari. First, Jafari's attorneys did not respond to nine separate attempts to meet and confer regarding disclosures, discovery, and objections to exhibits.[3] Second,

---

[3] The letters involved: (1) Jafari's filing of initial disclosures on the court's docket, which included personal information without redactions; (2) Shirazi's objection to Jafari's expert witness; (3) Shirazi's objections to Jafari's exhibits 16-21; (4) a second letter regarding Jafari's obligation to remove personal information from the docket; (5) Jafari's improper filing of the expert witness report on the docket; (6) a warning

Jafari did not file the unified statement of objections by the September 15, 2025 deadline. Finally, according to Shirazi, Jafari failed to timely respond to requests for admission, which were due in August 2025, and because they were deemed admitted, there were no factual issues left for trial. Shirazi argued that Jafari's attorney Nassif attempted to associate Frank as co-counsel, but Frank had virtually no bankruptcy experience, and he also ignored every deadline and meet-and-confer letter.

Shirazi argued that dismissal for lack of prosecution was warranted because of Jafari's continued pattern of delay and his blatant disregard for the court's scheduling order which included a warning that failure to comply with deadlines could result in dismissal. Shirazi provided notice of the hearing on the motion to dismiss, set for November 12, 2025, which required written responses to be filed fourteen days prior to the hearing.

On October 1, 2025, Jafari filed a motion to withdraw deemed admissions, and a declaration from Nassif stating that he had been experiencing health issues and had mis-calendared the deadline for responses to the requests for admission. Jafari noticed a hearing on the motion to withdraw admission for November 4, 2025, and Shirazi filed an opposition.

---

about possible witness tampering and bribery; (7) a warning that Jafari's continued failure to respond to the meet-and-confer letters could result in sanctions; (8) Jafari's failure to respond to requests for admission and a final demand for timely responses to Shirazi's interrogatories and requests for document production; and (9) a letter regarding Jafari's inadequate discovery responses.

Pursuant to a shutdown plan adopted in response to the lapse in appropriations for the Judiciary, the bankruptcy court entered an order on October 28, 2025, continuing the hearings on: (1) Shirazi's motion to dismiss the adversary proceeding; (2) Jafari's motion to withdraw admissions; (3) the Second OSC; and (4) the pretrial conference. The court continued the hearings on the motions and the Second OSC to January 20, 2026, and it continued the pretrial conference to February 17, 2026. Regarding the motion to dismiss, the order specified: "All responsive pleading (i.e., opposition and reply) deadlines shall not be continued and shall remain as if the hearing were to proceed on November 12, 2025. Other than such pleadings, no further pleadings shall be permitted."

Jafari did not file an opposition to the motion to dismiss until January 5, 2026, nearly two months after the deadline. He argued that Shirazi did not serve his attorney Frank with the motion, despite having notice that Frank was substituted for Nassif as Jafari's attorney of record. Jafari maintained that Shirazi's attorney's meet-and-confer attempts were merely efforts to harass and overwhelm Nassif, and he argued that Nassif had responded to several of the letters. Jafari argued the deemed admissions should not be considered for purposes of dismissal as argued in his motion to withdraw the admissions.

Jafari also filed a declaration from Nassif, explaining his health issues and stating his view that Shirazi sought to harass and overwhelm him with nine meet-and-confer letters over twenty-eight days. Nassif said he did not respond to some of the letters because of his health, and because Frank could have responded later if Shirazi decided to file a motion regarding any of the issues in the letters.

C. The court's ruling

On January 20, 2026, the bankruptcy court vacated the hearing and dismissed the adversary proceeding with prejudice. The court noted that its decision did not turn on a single missed deadline or procedural lapse, but on "a sustained pattern of noncompliance with Court-ordered obligations that materially impeded the orderly progression of this adversary proceeding." The court considered Nassif's health circumstances, but concluded that when compliance is not possible, it is incumbent upon the litigant to seek relief. Neither Nassif nor Frank made any request to extend, modify, or otherwise obtain relief from the court's scheduling order.

The bankruptcy court applied the factors set forth in *Malone v. United States Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (the "*Malone* factors"), and held that four of the five factors—the public interest in expeditious resolution, the court's need to manage its docket, the risk of prejudice to defendant, and the availability of lesser sanctions—weighed in favor of dismissal while only the public policy favoring disposition on the merits weighed against dismissal. It reasoned that its two prior OSCs and its July 2025 scheduling order clearly warned that dismissal could result if Jafari failed to comply with his obligations, yet he failed to participate in the meet-and-confer process or to file the unified statement of objections as required by the scheduling order. And despite having actual notice of the motion to dismiss and an express order that existing deadlines would remain in place, Jafari did not timely respond to the motion to dismiss or move for an extension, reconsideration, or other relief.

The court considered less drastic alternatives to dismissal but determined that, in light of repeated warnings and prior court intervention to address noncompliance, lesser alternatives would not ensure future compliance or advance timely resolution of the case. The court entered an order dismissing the adversary proceeding with prejudice, and Jafari appealed.

JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(I). We have jurisdiction under 28 U.S.C. § 158.

ISSUES

Did Shirazi's failure to serve attorney Frank with the motion to dismiss deprive Jafari of due process?

Did the bankruptcy court abuse its discretion by dismissing the adversary proceeding with prejudice?

STANDARDS OF REVIEW

"Whether a person's due process rights have been violated is a mixed question of law and fact, which is reviewed de novo." *Hasso v. Mozsgai (In re La Sierra Fin. Servs., Inc.)*, 290 B.R. 718, 726 (9th Cir. BAP 2002) (citing

Wilborn v. Gallagher (In re Wilborn), 205 B.R. 202, 206 (9th Cir. BAP 1996)). "De novo review requires that we consider a matter anew, as if no decision had been made previously." *Francis v. Wallace (In re Francis)*, 505 B.R. 914, 917 (9th Cir. BAP 2014).

We review for abuse of discretion the bankruptcy court's dismissal of an adversary proceeding based on a plaintiff's failure to prosecute or to comply with rules or a court order. *Lee v. Roessler-Lobert (In re Roessler-Lobert)*, 567 B.R. 560, 567 (9th Cir. BAP 2017) (citations omitted).

A bankruptcy court abuses its discretion if it applies an incorrect legal standard or its factual findings are illogical, implausible, or without support in the record. *TrafficSchool.com, Inc. v. Edriver Inc.*, 653 F.3d 820, 832 (9th Cir. 2011). "[W]e will overturn a dismissal sanction only if we have a definite and firm conviction that it was clearly outside the acceptable range of sanctions." *In re Roessler-Lobert*, 567 B.R. at 567 (quoting *Malone*, 833 F.2d at 130).

DISCUSSION

Jafari argues the court erred by dismissing the case because Shirazi did not properly serve the motion to dismiss, and the court abused its discretion in weighing the *Malone* factors. He maintains that the delays were caused by both parties, and were not the product of willfulness, bad faith, or fault by Jafari. He disputes the court's finding of prejudice to Shirazi, and he argues the court did not meaningfully consider lesser alternatives or the relative fault of the parties.

A. Legal standards governing dismissal

The bankruptcy court dismissed the adversary proceeding pursuant to Civil Rule 41(b), made applicable by Rule 7041, which provides: "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."

Whether the bankruptcy court dismisses for lack of prosecution, or for failure to obey a court order, it must consider the same five factors: (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 disposition of cases on their merits; and (5) the availability of less drastic sanctions. *See In re Roessler-Lobert*, 567 B.R. at 568; 572 (citing *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) and *Malone*, 833 F.2d at 130). Additionally, dismissal for lack of prosecution "must be supported by a showing of unreasonable delay." *Henderson*, 779 F.2d at 1423.

The five-factor test is a "balancing test." *Adriana Int'l Corp. v. Thoeren*, 913 F.2d 1406, 1413 (9th Cir. 1990). "We may affirm a dismissal where at least four factors support dismissal, or where at least three factors strongly support dismissal." *Dreith v. Nu Image, Inc.*, 648 F.3d 779, 788 (9th Cir. 2011) (quoting *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)).

B. Jafari had sufficient notice of the motion to dismiss to satisfy due process.

Civil Rule 5, incorporated by Rule 7005, requires written motions to be served, and provides that if a party is represented by an attorney, service must be made on the attorney. According to Jafari, Shirazi served the motion on Nassif, but not Frank, despite having notice that Frank had been substituted as Jafari's attorney of record as of August 31, 2025.

Pursuant to LBR 9036-1, the filing of a document on the court's docket automatically generates a notice of electronic filing ("NEF") and sends the NEF to all Case Management Electronic Case Filing system ("CM/ECF") users who have consented to electronic service.[4] Thus, if Frank did not receive the NEF, it is because he did not register as a CM/ECF user, as required by the Local Rules, when he was associated as co-counsel on August 21, 2025, or when he was substituted as Jafari's attorney of record on August 31, 2025.

Regardless of whether Frank was properly served, he and Jafari had actual notice of the motion to dismiss by at least October 28, 2025, when the

---

[4] LBR 9036-1 further states that "[r]egardless of whether it is the duty of the court or of another person or entity to provide notice or service, service of the NEF constitutes notice and service pursuant to the [Civil Rules, Rules, and Local Rules] for all persons and entities that have consented to electronic service." LBR 5005-4 requires, with limited exceptions, all attorneys to register with CM/ECF and file documents electronically, and LBR 2002-1(a)(3) explains that "if an authorized agent is a registered CM/ECF user, the agent is deemed to consent to receive electronic notice and service from the clerk and parties in interest in the case or proceeding."

court issued its order continuing the hearings and keeping the response deadlines in place. But Jafari did not file a response until January 5, 2026, and he did not file any request for an extension or reconsideration of the deadlines. Moreover, Jafari did not notify the court of the service issue until he filed the untimely response, over two months after he unequivocally had actual notice of the motion to dismiss.

Jafari had sufficient notice of the motion to dismiss to satisfy due process, and any service problem was caused by his attorneys' failure to ensure the newly substituted Frank would receive electronic notice. *See Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950) (holding that due process requires notice "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.").

Moreover, an alleged due process violation cannot constitute reversible error unless the party asserting the violation can demonstrate prejudice. *See Rosson v. Fitzgerald (In re Rosson)*, 545 F.3d 764, 776-77 (9th Cir. 2008), *partially abrogated on other grounds as recognized by Nichols v. Marana Stockyard & Livestock Mkt., Inc. (In re Nichols)*, 10 F.4th 956, 962 (9th Cir. 2021). Here, the bankruptcy court did not dismiss the case merely because Jafari filed an untimely response to the motion to dismiss. It found a pattern of delay and noncompliance with court orders. Even if Frank was not properly served, he did not meet and confer with Shirazi's counsel, and he did not file the unified statement of objections, which was due by

September 15, 2025, or the JPTS, which was due by November 20, 2025. He offered no excuse for his continued failure to comply with deadlines, and he did nothing to seek an extension or other relief from those deadlines. Thus, he cannot establish prejudice.

We find no error in the court's decision to rule on the motion to dismiss, notwithstanding Jafari's claim that he was not properly served.

C. The bankruptcy court did not abuse its discretion by dismissing the adversary proceeding.

Jafari does not contest the bankruptcy court's use of the *Malone* factors, which we agree is the correct legal standard for determining whether to dismiss the case under Civil Rule 41(b). Instead, he maintains that the court's factual findings and its weighing of the factors were clearly erroneous. He argues that the court erred by finding a risk of prejudice to Shirazi, and by failing to meaningfully consider lesser alternatives.

Jafari also argues that the fourth *Malone* factor—the public policy favoring resolution on the merits—weighs against dismissal, but this is consistent with what the bankruptcy court found. The fourth factor will almost always weigh against case-dispositive sanctions. *See Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002). The first two *Malone* factors, which Jafari does not dispute, virtually always weigh in favor of dismissal where violations cause delays which could result in a need to reschedule the trial. *See id.* ("The public's interest in expeditious resolution of litigation always favors dismissal . . . The trial judge is in the best position to determine whether the delay in a particular case interferes with docket management and the public interest." (citations omitted)). Thus, whether dismissal is appropriate turns on the risk of prejudice to Shirazi and the availability of less drastic sanctions. *See Wanderer v. Johnston*, 910 F.2d 652, 656 (9th Cir. 1990) ("The first two of these factors favor the imposition of sanctions in most cases, while the fourth cuts against a default or dismissal sanction. Thus the key factors are prejudice and availability of lesser sanctions."); *see also Adriana Int'l Corp.*, 913 F.2d at 1412 ("Where a court order is violated, the first two factors support sanctions and the fourth factor cuts against a default. Therefore, it is the third and fifth factors that are decisive.").

1. Risk of prejudice to Shirazi

Mere delay is insufficient to prejudice Shirazi. *See Wanderer*, 910 F.2d at 656 ("Delay alone, without a focus on its effects, will not justify dismissal or default."). In determining the risk of prejudice, we must consider whether Jafari's actions impaired the parties' ability to go to trial or threatened to interfere with the rightful decision of the case. *See Adriana Int'l Corp.*, 913 F.2d at 1412; *Moneymaker v. Coben (In re Eisen)*, 31 F.3d 1447, 1453 (9th Cir. 1994). We evaluate the risk of prejudice to Shirazi with reference to the reasonableness of Jafari's excuse for the delay. *See Malone*, 833 F.2d at 131. Ultimately, the risk of prejudice must be considered in conjunction with whether less drastic alternatives would likely result in completion of discovery obligations and a decision on the merits. *See Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills*, 482 F.3d 1091, 1097 (9th Cir.

2007) ("What is most critical for case-dispositive sanctions, regarding risk of prejudice and of less drastic sanctions, is whether the discovery violations threaten to interfere with the rightful decision of the case.") (citation modified).

Here, the bankruptcy court reasoned that Jafari's failure to participate in the meet-and-confer process precluded the filing of the unified statement of objections and materially undermined the court's trial schedule. Jafari's excuse for noncompliance was unreasonable. In his response to the motion to dismiss, Jafari simply claimed that the meet-and-confer letters from Shirazi's counsel were an attempt to harass and overwhelm his prior attorney, and the issues must have been unimportant because Shirazi's counsel did not follow up with a phone call or file any other motion (beside the motion to dismiss) to address the issues. Jafari offered no explanation for his failure to timely respond to the motion to dismiss or seek other relief, despite having actual notice. And he did not explain why he failed to comply with the court's order to timely file the unified statement of objections or the JPTS.

Jafari offered no excuse for the pattern of delay and noncompliance other than to suggest both parties were to blame. He maintains that his prior attorney was suffering with health issues, but he does not explain why his prior counsel's health would impede his new attorney's ability to meet deadlines. And the record indicates that his prior counsel "mis-calendared" at least three separate hearings or deadlines (the January 2025 pretrial conference, the June 2025 pretrial conference and JPTS, and the August 2025 deadline to respond to requests for admission), most of which occurred prior to his health issues, which Nassif said began in early August 2025.

Given the unreasonableness of Jafari's excuses and the persistence of his noncompliance and delay, we find no error in the court's finding of risk of prejudice to Shirazi.

2. Consideration of less drastic alternatives

The fifth *Malone* factor requires the court to consider less drastic alternatives to dismissal. The bankruptcy court "need not exhaust every sanction short of dismissal before finally dismissing a case, but must explore possible and meaningful alternatives." *Henderson*, 779 F.2d at 1424. The availability of less drastic sanctions has three sub-parts: "whether the court has considered lesser sanctions, whether it tried them, and whether it warned the recalcitrant party about the possibility of case-dispositive sanctions." *Conn. Gen. Life Ins. Co.*, 482 F.3d at 1096. "[P]roviding a plaintiff with a second or third chance following a procedural default is a 'lenient sanction,' which, when met with further default, may justify imposition of the ultimate sanction of dismissal with prejudice." *Malone*, 833 F.2d at 132 n.1 (citation modified).

Jafari argues that the court could have imposed monetary sanctions, ordered prompt compliance with discovery, or set a firm trial-management deadline instead of dismissing the proceeding. But the bankruptcy court considered—and tried—lesser sanctions, and it warned Jafari of the possibility of dismissal. The court issued the First OSC regarding potential dismissal for failure to prosecute and the Second OSC regarding potential monetary sanctions for failures to comply with court orders and Local Rules. After resetting the initial trial date, the court issued another clear warning that if Jafari missed any more deadlines, the court would consider dismissal with prejudice.

Because of Jafari's persistent delays and failures to comply with court-ordered deadlines, the bankruptcy court was justified in concluding that less drastic sanctions were not likely to ensure future compliance or advance timely resolution of the case. *See Valley Eng'rs Inc. v. Elec. Eng'g Co.*, 158 F.3d 1051, 1057 (9th Cir. 1998) ("Dismissal is appropriate where a 'pattern of deception and discovery abuse made it impossible' for the district court to conduct a trial 'with any reasonable assurance that the truth would be available.'" (quoting *Anheuser-Busch, Inc. v. Nat. Beverage Distribs.*, 69 F.3d 337, 352 (9th Cir. 1995))).

Jafari has not demonstrated that the court's factual findings were clearly erroneous, and we discern no abuse of discretion in the court's application of the *Malone* factors or in its decision to dismiss the adversary proceeding.

CONCLUSION

Based on the foregoing, we AFFIRM the bankruptcy court's order dismissing with prejudice the adversary proceeding.