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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CALIFORNIA POLICY CENTER, INC., Plaintiff - Appellant, v. LILIA GARCIA-BROWER, in her official capacity as the Labor Commissioner in the Division of Labor Standards Enforcement of the California Department of Industrial Relations, Defendant - Appellee.	No. 25-6173 D.C. No. 8:25-cv-00271-MWC-SK MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Michelle Williams Court, District Judge, Presiding

Argued and Submitted July 7, 2026
San Francisco, California

Before: PAEZ, TALLMAN, and BENNETT, Circuit Judges.

Plaintiff California Policy Center ("CPC") brought a pre-enforcement challenge against California Senate Bill 399 ("SB 399"), seeking declaratory and injunctive relief. The district court dismissed the complaint under Federal Rule of

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

Civil Procedure Rule 12(b)(1), without prejudice, for lack of standing and ripeness, but did not set a deadline for amending the complaint. The district court later set a deadline to file "any amendment" and warned that failure to amend would result in dismissal with prejudice. CPC did not amend its complaint, and the district court dismissed with prejudice—but under Rule 41(b), for failure to prosecute and follow court orders, rather than under Rule 12(b)(1), for lack of standing and ripeness. The district court also denied CPC's motion for reconsideration. CPC appeals all three orders.

We review the dismissal of a complaint under Rule 41(b) for abuse of discretion. *Applied Underwriters, Inc. v. Lichtenegger*, 913 F.3d 884, 890 (9th Cir. 2019). Exercising jurisdiction pursuant to 28 U.S.C. § 1291, we reverse the Rule 41(b) dismissal. Because we reverse the order for which CPC sought reconsideration, we do not review the order denying reconsideration. *See Unified W. Grocers, Inc. v. Twin City Fire Ins. Co.*, 457 F.3d 1106, 1117 n.11 (9th Cir. 2006).

Because we conclude that the Rule 41(b) dismissal was improper, we have jurisdiction to review the prior Rule 12(b)(1) dismissal order as an interlocutory order that has merged into the final judgment. *See Sackett v. Beaman*, 399 F.2d 884, 889 n.6 (9th Cir. 1968); *Al-Torki v. Kaempen*, 78 F.3d 1381, 1386 (9th Cir. 1996). Reviewing that dismissal order de novo, *Peace Ranch, LLC v. Bonta*, 93

F.4th 482, 487 (9th Cir. 2024), we reverse and remand.

1. The district court abused its discretion in dismissing CPC's complaint under Rule 41(b). Defendant "takes no position on this issue."

Dismissal under Rule 41(b) "is an exceedingly harsh sanction which should be imposed only in extreme cases." *Applied Underwriters*, 913 F.3d at 891 (quoting *Mann v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 488 F.2d 75, 76 (5th Cir. 1973) (per curiam)). That is because, among other reasons, a plaintiff whose complaint is dismissed under Rule 41(b) may not appeal any prior interlocutory rulings. *Al-Torki*, 78 F.3d at 1386.

Five factors guide the decision of whether to impose this harsh sanction: "(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 alternatives." *Applied Underwriters*, 913 F.3d at 890 (quoting *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)). We may affirm "where at least three factors 'strongly' support dismissal." *Yourish*, 191 F.3d at 990 (quoting *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998)).

Even if we assume that the first two factors weigh in favor of dismissal, *see id.* at 990–91, the remaining factors weigh against. Most significantly, as to the last factor, there was an obvious "less drastic alternative[]": entering final

judgment on the prior dismissal for lack of standing and ripeness. *Applied Underwriters*, 913 F.3d at 890 (quoting *Yourish*, 191 F.3d at 990). That would have ended any potential delay while preserving the possibility of appellate review on the merits.

And as to the third factor, CPC's conduct did not prejudice Defendant by any unreasonable or unjustified delay. *See Yourish*, 191 F.3d at 991–92. The district court's first dismissal without prejudice was not an appealable final order. *WMX Techs., Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). The district court informed CPC that it would dismiss the complaint *with* prejudice if CPC did not file an amended complaint. CPC wanted an appealable final order, so it waited for dismissal with prejudice. When the district court instead dismissed under Rule 41(b), CPC moved for reconsideration the next day.

Although not ordered to do so, it would have been preferable for CPC to notify the district court that it intended to stand on its complaint. *See Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1064–65 (9th Cir. 2004). But because the district court did not *require* the filing of an amended complaint or notice of intent to stand on the complaint, and did not notify CPC of the risk of dismissal under Rule 41, CPC's conduct was not so unreasonable as to warrant dismissal under Rule 41. *See Applied Underwriters*, 913 F.3d at 891.

Finally, the fourth factor generally weighs against dismissal. *See Yourish*, 191 F.3d at 992 ("Defendants do not advance any arguments why public policy would not favor resolution of this action on the merits."). We therefore hold that the district court abused its discretion.

2. The district court also erred in dismissing CPC's complaint for lack of standing and ripeness. We consider the three elements of pre-enforcement injury: "[1] an intention to engage in a course of conduct arguably affected with a constitutional interest, but [2] proscribed by a statute, and [3] there exists a credible threat of prosecution thereunder." *Am. Encore v. Fontes*, 152 F.4th 1097, 1114 (9th Cir. 2025) (quoting *Planned Parenthood Great Nw., Haw., Alaska, Ind., Ky. v. Labrador*, 122 F.4th 825, 836 (9th Cir. 2024)).

First, CPC alleges its "intent" to hold mandatory meetings but for SB 399 and a "corroborating past practice" of holding these meetings. *Peace Ranch*, 93 F.4th at 488. CPC further alleges that in such meetings, it would engage in political speech, conduct that "is certainly 'affected with a constitutional interest.'" *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 162 (2014) (quoting *Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 298 (1979)).

Second, CPC's intended future conduct is also "arguably proscribed" by SB 399. *Am. Encore*, 152 F.4th at 1118. CPC alleges that the political meetings it wishes to hold (and used to hold) are mandatory. It is at least arguable that an

employer that holds a mandatory meeting "threaten[s] to subject" its employees to "adverse action because the employee declines to attend." Cal. Lab. Code § 1137(c); *see Cal. Chamber of Com. v. Bonta*, —— F.4th —— (9th Cir. 2026).

The Commissioner argues that CPC's conduct is not proscribed by SB 399 and thus there is no credible threat of enforcement, because CPC is "likely" (although not definitively) exempted from SB 399's operation by § 1137(g)(2) and § 1137(h)(2).

We disagree, as it is at least "arguable" that CPC's conduct is not covered by either exception. *Am. Encore*, 152 F.4th at 1110–11. First, § 1137(g)(2) exempts "[a]n employer from communicating to its employees any information that is necessary for those employees to perform their job duties." But CPC alleges that it wishes to engage in non-essential political communication. For instance, CPC wants its employees to engage with political topics "regardless of whether a specific employee is working on a specific topic."

Next, § 1137(h)(2) exempts "[a] political organization or party requiring its employees to attend an employer-sponsored meeting or to participate in any communications with the employer or its agents or representatives, the purpose of which is to communicate the employer's political tenets or purposes." But CPC alleges that it intends to hold meetings that are more than one-way communication

of "tenets or purposes," Cal. Lab. Code § 1137(h)(2), including meetings to solicit the "ideas or new perspective[s]" of non-experts in the organization.

There is also a fair argument that CPC is not a "political organization or party." *Id.* For instance, CPC asserts that it is not an electioneering organization, like a political party or campaign, and Defendant does not argue otherwise. But the term "political organization" is generally defined in California law to refer to electioneering organizations. *See, e.g.*, Cal. Rev. & Tax. Code § 23701r(e)(1); Cal. Educ. Code § 76067. That California submits other arguable constructions of the law is immaterial, even if those constructions were to carry the day in a full merits analysis. At this stage, we need not reach any "legal conclusions." *Am. Encore*, 152 F.4th at 1116 n.10. Rather, we must "accept the plaintiff's construction so long as it is arguable." *Id.* at 1110–11. CPC has cleared that low bar.

Third and finally, Defendant has declined to disavow enforcement, making such a threat "credible." *Imperial Sovereign Ct. of Montana v. Knudsen*, 170 F.4th 820, 835 (9th Cir. 2026).

We therefore hold that CPC has standing to pursue its pre-enforcement challenge. We need not decide whether the district court erred in concluding that other possible claims, based on conduct not specifically alleged in the complaint, are not ripe for review. CPC's allegations suffice.

REVERSED and REMANDED.