UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 8:25-cv-02384-FWS-JDE Date: March 4, 2026
Title: Shimmick Construction Company, Inc. *et al.* v. Arch Specialty Insurance Company *et al.*

Present: **HONORABLE FRED W. SLAUGHTER, UNITED STATES DISTRICT JUDGE**

Rolls Royce Paschal	N/A
Deputy Clerk	Court Reporter

Attorneys Present for Plaintiff:	Attorneys Present for Defendants:
Not Present	Not Present

PROCEEDINGS: (IN CHAMBERS) ORDER GRANTING DEFENDANT'S MOTION TO DISMISS [21]

In this case, Plaintiffs Shimmick Construction Company and Shimmick Corporation (together, "Shimmick") allege that Defendant Scottsdale Insurance Company ("Scottsdale")[1] wrongfully failed to defend them in a case brought against Shimmick in Alameda Superior Court. (*See generally* Dkt. 1 (Complaint, "Compl.").) Before the court is Scottsdale's Motion to Dismiss. (Dkt. 32 ("Motion" or "Mot.").) Shimmick opposes the Motion. (Dkt. 37 ("Opp.").) Scottsdale filed a reply in support of the Motion. (Dkt. 39 ("Reply").) The court finds this matter appropriate for resolution without oral argument. *See* Fed. R. Civ. P. 78(b) ("By rule or order, the court may provide for submitting and determining motions on briefs, without oral hearings."); C.D. Cal. L.R. 7-15 (authorizing courts to "dispense with oral argument on any motion except where an oral hearing is required by statute"). Accordingly, the **hearing** scheduled on **March 19, 2026**, (*see* Dkt. 38), is **VACATED** and **OFF CALENDAR**. Based on the record, as applied to the relevant law, the Motion is **GRANTED**.

I. Background

A. The Alameda Action

[1] Shimmick voluntarily dismissed the other previously-named defendant, Arch Specialty Insurance Company. (Dkt. 36.)

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On May 23, 2025, nearly two dozen public entities[2] filed a 150-page Complaint for Redress of False Claims and Prevailing Wage Law Violations against Shimmick and several other defendants[3] in the Superior Court of California for the County of Alameda. *Alameda Corridor East Construction Authority, et al. v. Shimmick Construction Co., et al*., Case No. 25CV109652 (the "Alameda Action"). (Compl. ¶ 10; Dkt. 6-1 ("Alameda Complaint").) The Alameda Complaint alleged, in summary,

> Over the last ten years, [Shimmick] have systematically defrauded California municipalities and local public agencies, denied workers their hard-earned prevailing wages, and deprived California of a properly trained public workforce. Shimmick is a construction contractor that specializes in large public water infrastructure projects. Over the past decade, Shimmick has won numerous lucrative, years-

[2] These are: Alameda Corridor East Construction Authority, Calleguas Municipal Water District, City of Antioch, City of Foster City, City of Fremont, City of Oceanside-Water Utilities Department, City of Richmond, City of San Diego, City of San Diego Public Works Contracts, City of San Diego Public Works Department, Irvine Ranch Water District 3, Knights Landing Drainage District, Los Angeles Department of Water and Power, Orange County Sanitation District, Orange County Water District, Peninsular Corridor Joint Powers Board, Port of Los Angeles Construction Division, San Diego Unified Port District, San Francisco Bay Area Rapid Transit District, San Francisco Public Utilities Commission, San Joaquin Area Flood Control Agency, the Sonoma-Marin Area Rail Transit, and the Water Replenishment District of Southern California on behalf of *qui tam* Plaintiffs TRICO Pipes LMCC and Nick Goodwin.

[3] These are: AECOM, Amentum Environment & Energy, Inc., Veolia Water West Operating Services, Inc., Veolia North America, LLC, Disney Construction, Inc., Shimmick/Disney Joint Venture, Webcor Construction, LP, dba Webcor Builders, Obayashi Corporation, W.M. Lyles Co., Webcor Obayashi Lyles Joint Venture, Berkshire Hathaway Specialty Insurance Co., Liberty Mutual Insurance Co., Fidelity and Deposit Co. of Maryland, Zurich American Insurance Co., Hartford Fire Insurance Co., Federal Insurance Co., Vanessa Irving, Rosebelle DeLong, and Rosa Gonzales.

> long contracts to complete water infrastructure projects for public entities throughout California, for which it was paid more than $1.5 billion in public funds. As required by those contracts, Shimmick repeatedly certified its compliance with California's prevailing wage and apprentice-training laws.
>
> However, in truth, Shimmick persistently failed to comply with the law in three ways: (1) Shimmick failed to pay prevailing wages for particular skilled-craft work, relying instead on lower-cost trades to perform pipefitting and other skilled-craft work; (2) Shimmick failed to hire and train pipefitter and other skilled-craft apprentices; and (3) Shimmick failed to employ the required number and types of apprentices across numerous trades.

(*Id.* ¶¶ 1-2.)

"Qui tam Plaintiffs TRICO Pipes Labor-Management Cooperation Committee ['TRICO'] and Nick Goodwin thus bring this Qui tam action to recover damages and civil penalties from Defendants Shimmick [and others] for the false claims Defendants have made in violation of the California False Claims Act," and "seek to enjoin Shimmick from continuing its systematic fraud and violations of California's labor laws under Labor Code section 1771.2 and California's Unfair Competition Law." (*Id.* ¶ 17.) And TRICO "brings suit on behalf of its Assignor, Ed Teixeira, to recover wages, interest, liquidated damages, and penalties from Shimmick under Labor Code sections 203, 1771, 1774, 1194 and 1194.2." (*Id.*)

The Alameda Complaint asserts claims for: (1) presentation of false claims with respect to prevailing wage rates and employment of apprentices; (2) causing false records and statements material to false claims to be made or used with respect to prevailing wage rates and employment of apprentices; (3) failure to disclose false claims; (4) unlawful, unfair, and/or fraudulent business practices; (5) failure to pay prevailing wages; (6) failure to pay prevailing wages to assignor Ed Teixeira; and (7) performance of Surety Defendants' bonds – Surety Defendants. (*Id.* ¶¶ 634-672.)

On October 21, 2025, a First Amended Complaint was filed in the Alameda Action, eliminating the cause of action on behalf of Ed Teixeira and all allegations related to him, among other allegations. (Dkt. 16-11 ("Alameda FAC"); *see* Compl. ¶¶ 40-45.)

B. The Policy

Scottsdale issued Shimmick an Employment Practice Liability Insurance Policy with policy number PQS2500021 and a policy period of April 1, 2025, to April 1, 2026 (the "Policy"). (Compl. ¶¶ 152-53; Dkt. 16-9 (Policy).) The Policy provides coverage for:

> I. INSURING AGREEMENTS
>
> A. Employment Practices Liability Coverage
>
> The **Insurer** shall pay **Loss** resulting from an **Employment Claim** that is brought by or on behalf of an **Employee** and is first made against the **Insured** during the **Policy Period**, or, if applicable, the **Extended Reporting Period**.
>
> B. Third Party Liability Coverage
>
> The **Insurer** shall pay **Loss** resulting from a **Third Party Claim** that is brought by or on behalf of a **Third Party** and is first made against the **Insured** during the **Policy Period**, or, if applicable, the **Extended Reporting Period**.

(Policy at 7 of 45.) "**Employment Claim**" includes a civil proceeding commenced with a complaint against the **Insured "**that alleges **Employment Practices Wrongful Acts**." (*Id.* at 27 of 45.)

N. **Employment Practices Wrongful Act** means any of the following:

1. **Employment Contract Breach**;
2. **Employment Discrimination**;
3. **Harassment**;
4. **Retaliation**;
5. **Workplace Tort**;
6. **Wrongful Employment Decision**; or
7. **Wrongful Termination**;

committed, attempted, or allegedly committed or attempted by an **Organization** or by an **Insured Person** while acting in his or her capacity as such, including but not limited to such acts committed through any internet or social media activity.

(*Id.* at 28 of 45.)

L. **Employment Contract Breach** means breach of any employment-related oral, written, implied, or express contract with the **Organization**, including any such contract arising out of any personnel manual, employee handbook, policy statement, written severance or settlement obligation, or other representation.

(*Id.* at 27-28 of 45.)

J. **Employee** means any natural person whose service or labor was, now is, or shall become engaged and directed by an **Organization**, including any part-time, seasonal, or temporary employee, leased employee, intern, or volunteer. **Employee** shall also include any **Independent Contractor** or any applicant for employment.

(*Id.* at 27 of 45.)

The Policy also contains the following exclusion:

III. EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS

The **Insurer** shall not be liable to pay any **Loss** resulting from, and shall not be obligated to defend, any **Claim** against an **Insured**:

E. for any actual or alleged violation of the responsibilities, obligations or duties imposed by:

1. any law governing workers' compensation, unemployment insurance, unemployment compensation, social security, retirement or disability benefits, or benefits of any kind;

> 2. the Fair Labor Standards Act (except the Equal Pay Act) or any other law concerning, child labor practices, or wage and hour practices, including without limitation any **Wage and Hour Wrongful Act**. However, this exclusion shall not apply to a **Wage and Hour Claim** or a **Wage and Employment Claim** if the **Wage and Hour Defense Costs** Sublimit is indicated as elected in Item 5.A. of the Declarations;

(*Id.* at 12 of 45.)

> BH. **Wage and Hour Wrongful Act** means any actual or alleged violation of the Fair Labor Standards Act (except the Equal Pay Act), the California Labor Code, or any other law, rule, regulation, or ordinance concerning wage and hour practices, including without limitation:
>
> 1. any allegations for: off-the-clock work; failure to pay wages; failure to provide proper wage statements; failure to provide rest or meal periods; failure to reimburse expenses; failure to properly maintain accurate time records; failure to properly determine or timely pay wages, overtime, minimum wage, or any other compensation; improper payroll deductions; improper classification of employees as exempt or non-exempt; improper classification of workers as employees or independent contractors; or
>
> 2. any allegation for conversion, unjust enrichment, unfair business practices or similar causes of action to the extent such causes of action relate to any alleged violation of any law, rule, regulation, or act described within this definition in Subparagraph BH.1., above;
>
> committed, attempted, or allegedly committed or attempted by an **Organization** or by an **Insured Person** while acting in his or her capacity as such.

(*Id.* at 35 of 45.)

Although it places the duty to defend a lawsuit on Shimmick, (Policy at 16 of 45), the Policy states that Shimmick "may elect to tender defense of the **Claim** to the **Insurer**," at which point "[t]he **Insurer** shall have the right and duty to defend any **Claim**," which "[c]overage shall apply regardless of whether or not any of the allegations are groundless, false, or fraudulent," (*id.* at 17 of 45).

C. Scottsdale Denies Coverage and Shimmick Brings This Case

Shimmick tendered the Alameda Complaint to Scottsdale and requested a defense and indemnity, but on September 23, 2025, Scottsdale denied the request. (Compl. ¶¶ 166-67; Dkt. 16-10 (Denial Letter).) Scottsdale stated that "[t]he claims brought by *Qui Tam* Plaintiffs on

behalf of California public entities do not satisfy the Insuring Agreement as they are not **Employment Claims** brought by or on behalf of an **Employee**." (Denial Letter at 3.) Scottsdale further explained its position that "[t]he allegations brought on behalf of Texeira" in the sixth cause of action "do not qualify as **Employment Practices Wrongful Acts**," so "[t]he Alameda Action therefore does not constitute an **Employment Practices Claim** and the Insuring Agreement is not satisfied" and "there is no coverage under the **Policy**." (*Id.* at 4.) Scottsdale also cited exclusion III.E. of the Policy. (*Id.* at 5.)

On October 27, 2025, Shimmick brought this case, alleging that Scottsdale breached its contractual obligations under the Policy to advance defense costs in the Alameda Action. (Compl. ¶ 184.) Shimmick asserts claims against Scottsdale for (1) declaratory relief – duty to defend, (*id.* ¶¶ 192-200) (2) breach of contract, (*id.* ¶¶ 209-216) and (3) bad faith (breach of the implied covenant of good faith and fair dealing), (*id.* ¶¶ 227-236), and seeks a declaration of rights, $338,372.18 in post-tender defense costs incurred to date plus additional costs incurred before judgment in this case, punitive damages, and attorney fees, (*id.* at 39-40 (Prayer for Relief)).

II. Legal Standard

Federal Rule of Civil Procedure 12(b)(6) permits a defendant to move to dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "[C]ourts must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322 (2007). To withstand a motion to dismiss brought under Rule 12(b)(6), a complaint must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). While "a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations," a plaintiff must provide "more than labels and conclusions" and "a formulaic recitation of the elements of a cause of action" such that the factual allegations "raise a right to relief above the speculative level." *Id.* at 555 (citations and internal quotation marks omitted); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (reiterating that "recitals of the

elements of a cause of action, supported by mere conclusory statements, do not suffice"). "A Rule 12(b)(6) dismissal 'can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.'" *Godecke v. Kinetic Concepts, Inc.*, 937 F.3d 1201, 1208 (9th Cir. 2019) (quoting *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990)).

"Establishing the plausibility of a complaint's allegations is a two-step process that is 'context-specific' and 'requires the reviewing court to draw on its judicial experience and common sense.'" *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 995-96 (9th Cir. 2014) (quoting *Iqbal*, 556 U.S. at 679). "First, to be entitled to the presumption of truth, allegations in a complaint . . . must contain sufficient allegations of underlying facts to give fair notice and to enable the fopposing party to defend itself effectively." *Id.* at 996 (quoting *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011)). "Second, the factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation." *Id.* (quoting *Starr*, 652 F.3d at 1216); *see also Iqbal*, 556 U.S. at 681.

Plausibility "is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556). On one hand, "[g]enerally, when a plaintiff alleges facts consistent with both the plaintiff's and the defendant's explanation, and both explanations are plausible, the plaintiff survives a motion to dismiss under Rule 12(b)(6)." *In re Dynamic Random Access Memory (DRAM) Indirect Purchaser Antitrust Litig.*, 28 F.4th 42, 47 (9th Cir. 2022) (citing *Starr*, 652 F.3d at 1216). But, on the other, "[w]here a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Eclectic Props. E.*, 751 F.3d at 996 (quoting *Iqbal*, 556 at U.S. 678). Ultimately, a claim is facially plausible where "the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *See Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 at 556); *accord Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1140 (9th Cir. 2012).

III. Discussion

In the Motion, Scottsdale argues it "correctly denied coverage under the Policy because [1] neither the complaint, nor the first amended complaint [] in the Underlying Action allege an Employment Practices Wrongful Act as is required to trigger coverage under the applicable insuring agreement in the Policy, and [2] coverage is specifically excluded by the Policy's Exclusion III. E. for wage and hour claims." (Mot. at 7.)

A. Insuring Agreement I.A.

Scottsdale first contends "[t]he claims brought by Qui Tam Plaintiffs on behalf of California public entities do not satisfy the Insuring Agreement as they are not **Employment Claims** brought by or on behalf of an **Employee**." (Mot. at 11.) The court agrees. There are two main categories of claims in the Alameda Action: (1) the public entities' claims that Shimmick submitted false claims and did not fulfill their contractual obligations to the public entities, and (2) TRICO's claim on behalf of Teixeira that Teixeira was underpaid as a journeyman.

The Policy does not provide coverage for the first category because those claims are not "**Employment Claims** brought by or on behalf of an **Employee**" under Insuring Agreement I.A. (Employment Practices Liability Coverage). (Policy at 7 of 45.) The allegations of the Alameda Complaint, reasserted in the Alameda FAC, make this clear. The Alameda Complaint alleges "Shimmick has violated California's false-claims, prevailing wage, and labor laws and has repeatedly submitted false certifications regarding its compliance with such laws." (Alameda Compl. & FAC ¶ 5.) "In sum, on a weekly and monthly basis for at least these twenty-seven projects, Shimmick made false certifications to public entities that it had complied with its contractual obligations and California's prevailing wage and labor laws. But in fact, Shimmick dramatically failed to comply with these obligations." (*Id.* ¶ 13.) "By cutting these corners, Shimmick harmed the public and was wrongfully enriched in multiple ways. For example, Shimmick was able to undercut the competition for public works contracts by offering cheaper bids that were based on fraudulently reduced wages. Shimmick should never have won those public-works contracts, and it should never have obtained the public funds resulting from those contracts." (*Id.* ¶ 14.) "The public entities paid over $1.5 billion for construction contracts that would train California workers in the skilled trades and that would boost their

local economies by paying workers a legal and fair wage. But that is not what the public entities received. Instead, due to Shimmick's fraudulent and unethical practices, apprentices went untrained and workers were underpaid, wreaking a heavy toll on local communities and economies—all to line the pockets of Shimmick and its corporate affiliates." (*Id.* ¶ 15.)

The interpretation of an insurance contract is a question of law for the courts. *See Waller v. Truck Ins. Exch., Inc.*, 11 Cal. 4th 1, 18 (1995). "While insurance contracts have special features, they are still contracts to which the ordinary rules of contractual interpretation apply." *Bank of the W. v. Superior Court*, 2 Cal. 4th 1254, 1264 (1992). "When interpreting a policy provision, [courts] must give terms their ordinary and popular usage, unless used by the parties in a technical sense or a special meaning is given to them by usage." *Palmer v. Truck Ins. Exch.*, 21 Cal. 4th 1109, 1115 (1999) (citation and quotation marks omitted). "Clear, explicit, and unambiguous contractual language governs." *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008) (citing *Boghos v. Certain Underwriters at Lloyd's of London*, 36 Cal. 4th 495, 501 (2005) and Cal. Civ. Code § 1638). In this case, the court finds Insuring Agreement I.A. does not provide coverage for the claims in the Alameda Complaint and FAC because, giving the terms in that agreement "their ordinary and popular usage," the "[c]lear, explicit, and unambiguous contractual language" shows that the claims are not **Employment Claims** brought by or on behalf of an **Employee** under the Policy. *Palmer*, 21 Cal. 4th at 1115; *Manzarek*, 519 F.3d at 1031.

Turning to the second category, the claim brought on behalf of a Shimmick employee, Ed Teixiera, which exists only in the Alameda Complaint and not in the Alameda FAC. The court finds the Policy does not provide coverage for the second bucket because the claim is not an "**Employment Claims**[]" s defined in the Policy. As stated, "**Employment Claim**" under the Policy includes a complaint that alleges "**Employment Practices Wrongful Acts**," which means:

1. **Employment Contract Breach**;
2. **Employment Discrimination**;
3. **Harassment**;
4. **Retaliation**;

5. **Workplace Tort**;
6. **Wrongful Employment Decision**; or
7. **Wrongful Termination . . .**

(Policy at 27-28 of 45.) The Alameda Complaint alleged Mr. Teixeira was "a journeyman who was employed by Shimmick and who Shimmick underpaid for his steamfitting work on the City of Richmond's Critical Improvements Project," paying him only $96.81 per hour in contrast to the $118.05 prevailing wage, and that Mr. Teixeira assigned TRICO "all wage-and-hour and other claims arising from Assignor's employment with Shimmick." (Alameda Compl. ¶¶ 19-20, 239; *see id.* ¶ 230.) The Alameda Complaint did not allege Mr. Teixeira was owed additional wages due to an employment contract or that he received below-prevailing wages because of discrimination or retaliation, or any other theory that would fall into the Policy's definition of **Employment Practices Wrongful Acts**. Accordingly, the court finds Insuring Agreement I.A. does not provide coverage for the claim on behalf of Teixeira in the Alameda Complaint because, giving the terms in that agreement "their ordinary and popular usage," the "[c]lear, explicit, and unambiguous contractual language" shows that the claim does not allege any **Employment Practices Wrongful Acts** as defined in the Policy. *Palmer*, 21 Cal. 4th at 1115; *Manzarek*, 519 F.3d at 1031.

B. Exclusion III.E

Even if the Policy provided coverage under Insuring Agreement I.A. for the claims in the Alameda Complaint or the Alameda FAC, which it does not, coverage would be excluded under Exclusion III.E, which provides that Scottsdale "shall not be liable to pay any **Loss** resulting from, and shall not be obligated to defend, any **Claim** against" Shimmick "for any actual or alleged violation of the responsibilities, obligations or duties imposed by . . . the Fair Labor Standards Act (except the Equal Pay Act) or any other law concerning, child labor practices, or wage and hour practices, including without limitation any **Wage and Hour Wrongful Act**," which includes, among other applicable categories, "failure to properly determine or timely pay wages, overtime, minimum wage, or any other compensation," and "any allegation for conversion, unjust enrichment, unfair business practices or similar causes of action to the extent such causes of action relate to any alleged violation of any law, rule, regulation, or act described

within this definition in Subparagraph BH.1., above." (Policy at 12-13, 35 of 45); *see Palmer*, 21 Cal. 4th at 1115; *Manzarek*, 519 F.3d at 1031.

C. Leave To Amend

In the Opposition, Shimmick argues it is entitled to coverage under Insuring Agreement I.B. for Third Party Liability coverage because "the Complaint sufficiently alleges claims for declaratory relief and breach of contract because the Underlying Complaints seek Loss resulting from a Third Party Claim." (Opp. at 12.) Because this theory was not alleged in the Complaint, the court does not address it in this Order. Although the court has doubts about the viability of this theory, (*see* Reply at 4, 7-9), the court observes that "leave to amend 'shall be freely given when justice so requires,'" and does not find that granting leave to amend "would not serve any purpose because to grant it would be futile in saving the plaintiff's suit." *Chinatown Neighborhood Ass'n v. Harris*, 794 F.3d 1136, 1144 (9th Cir. 2015) (quoting Fed. R. Civ. P. 15(a)). Accordingly, the court will grant Shimmick leave to amend.

IV. Disposition

For the foregoing reasons, the Motion is **GRANTED** and the Complaint is **DISMISSED WITH LEAVE TO AMEND**. If Shimmick believes they can amend the Complaint to remedy the deficiencies identified in this Order (and any others identified in the Motion and Reply that the court did not specifically address in this Order), Shimmick shall file an amended complaint on or before **March 25, 2026. Failure to file an amended complaint on or before the deadline set by the court will result in the dismissal of this action without prejudice without further notice for failure to prosecute and/or comply with a court order.** *See* Fed. R. Civ. P. 41(b); *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1227 (9th Cir. 2006) ("Rule 41(b) permits dismissal for failure of the plaintiff to prosecute or to comply with any order of court."); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991) (courts may "act sua sponte to dismiss a suit for failure to prosecute") (cleaned up); *Link v. Wabash R.R.*, 370 U.S. 626, 629 (1962) ("The authority of a federal trial court to dismiss a plaintiff's action with prejudice because of [their] failure to prosecute cannot seriously be doubted."); *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) ("[C]ourts

may dismiss under Rule 41(b) sua sponte, at least under certain circumstances."); *Pagtalunan v. Galaza*, 291 F.3d 639, 640-43 (9th Cir. 2002) (affirming *sua sponte* dismissal with prejudice "for failure to prosecute and for failure to comply with a court order"); *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986) ("District courts have inherent power to control their dockets" and "[i]n the exercise of that power they may impose sanctions including, where appropriate, default or dismissal.").