

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

SNORKEL INTERNATIONAL, INC.,)	
)	
Plaintiff,)	
)	CIVIL ACTION
v.)	
)	Case No. 08-2270-CM
UNIVERSAL EQUIPMENT, INC.,)	
)	
Defendant.)	
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ORDER

On October 28, 2009, Magistrate Judge Waxse entered an order directing plaintiff to show cause why the court should not dismiss the case for failure to prosecute. Judge Waxse had previously granted a motion to withdraw as counsel, leaving plaintiff—a corporation that cannot proceed *pro se*—without counsel. Plaintiff failed to retain substitute counsel within the time allowed by Judge Waxse.

Plaintiff timely responded to the order to show cause. Attorneys Scott C. Nehrbass and Matthew D. Stromberg have now entered their appearances on behalf of plaintiff. In its response, plaintiff explains internal and external turnover that resulted in its failure to timely retain new counsel and requests a sixty-day extension of the deadlines in the Amended Scheduling Order in order for new counsel to prepare to properly prosecute this lawsuit.

After reviewing plaintiff's response and considering the factors for dismissal under Rule 41(b), the court determines that involuntary dismissal is unwarranted in this case. *See Hopkins v. J.C. Penney Co.*, 227 F.R.D. 347, 352 (D. Kan. 2004) (listing the factors for dismissal: "(1) the degree of actual prejudice to the opposing party, (2) the degree of interference with the judicial process, (3) the litigant's culpability, (4) whether the litigant was warned in advance that dismissal

was a likely sanction, and (5) whether a lesser sanction would be effective”). Considering the unique circumstances of this case, the slight delay of proceedings caused by plaintiff’s failure to timely hire substitute counsel (just over a month) does not justify dismissal of the case as a sanction. The court also determines that a sixty-day extension of deadlines in the Amended Scheduling Order is appropriate.

IT IS THEREFORE ORDERED that plaintiff has shown cause why the case should not be dismissed for failure to prosecute.

IT IS FURTHER ORDERED that all pending deadlines in the Amended Scheduling Order are hereby extended by sixty days. The parties should contact the chambers of Judge Waxse within ten days of the date of this order to determine when Judge Waxse will conduct the final pretrial conference.

Dated this 2nd day of December 2009, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge