

1 S.D.N.Y.) (the “Primary Bankruptcy Proceeding”). Old Carco, LLC and Defendant
2 entered into a Master Transaction Agreement (“MTA”) under which Defendant purchased
3 substantially all of Old Carco, LLC’s assets and assumed certain liability. ECF No. 27 at
4 4.

5 On June 1, 2009, the United States Bankruptcy Court for the Southern District of
6 New York entered an order approving an asset sale to Defendant (the “Sale Order”). *Id.*

7 **B. Plaintiff’s Lawsuit**

8 On September 24, 2018, Plaintiff, on behalf of herself and all others similarly
9 situated, filed a class action complaint against Defendant FIAT CHRYSLER US LLC, a
10 Delaware limited liability company (“Chrysler”) alleging six claims for relief for (1)
11 violation of Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*; (2) breach of
12 contract/common law warranty based on California law; (3) breach of the duty of good
13 faith and fair dealing based on California law; (4) violations of California’s False
14 Advertising Law, CAL. BUS. & PROF. CODE §§ 17500, *et seq.*; (5) violation of California
15 Consumer Legal Remedies Act, CAL. CIV. CODE § 1750 *et seq.*; and (6) violation of
16 California Unfair Competition Law, CAL. BUS. & PROF. CODE §§ 17200, *et seq.* ECF No.
17 1.

18 On August 10, 2019, this Court (1) **GRANTED** Defendant’s Motion to Transfer this
19 case to the United States District Court for the Southern District of New York for referral
20 to the Bankruptcy Court and (2) **DENIED** *without prejudice* Defendant’s Motion to
21 Dismiss for (a) Lack of Personal Jurisdiction and (b) Failure to State a Claim. ECF No.
22 27.

23 On August 16, 2019, the case was transferred to the United States District Court for
24 the Southern District of New York. *See Hightman v. Fiat Chrysler US LLC, et al.*, No.
25 1:19-cv-07681-VSB (S.D.N.Y.), ECF No. 29. That same day, the case was referred to the
26 bankruptcy court pursuant to the Southern District of New York’s Standing Order regrading
27 referral of any cases involving 28 U.S.C. § 157(a) or Title 11, and an adversarial proceeding
28 was initiated in that Court. *See id.* at ECF No. 30; *see also Hightman v. Fiat Chrysler US*

1 *LLC, et al.*, No. 19-01333-SMB (Bankr. S.D.N.Y.R.) (the “Bankruptcy Proceeding”).

2 On March 11, 2020, the United States Bankruptcy Court for the Southern District of
3 New York issued an order on Defendant FCA US LLC’s Motion to Enforce the Court’s
4 Sale Order and to Dismiss the First Amended Class Action Complaint. Bankruptcy
5 Proceeding, ECF No. 15. The Court GRANTED in part and DENIED in part by dismissing
6 Plaintiff’s First, Third, and Sixth claims for relief. *Id.* Plaintiff also withdrew the Fourth
7 and Fifth claims for relief. *Id.* The Second Claim for Relief for breach of contract/common
8 law warranty was not dismissed to the extent it arose out of a breach of warranty *provided,*
9 *however,* that in all circumstances FCA US LLC’s liability for damages is limited to the
10 costs of repair and labor for fixing the vehicle, and any other claims for compensatory,
11 incidental, punitive or other damages are barred by the Sale Order. *Id.* Then, the Court
12 transferred that remaining claim for relief back to this Court. *Id.*

13 On December 14, 2020, this Court received the transfer documents from the United
14 States Bankruptcy Court for the Southern District of New York. ECF No. 30. To date,
15 Plaintiff has done nothing to prosecute the remaining claim in the action.

16 **III. LEGAL STANDARD**

17 “The plaintiff is responsible for having the summons and complaint served within
18 the time allowed by Rule 4(m) and must furnish the necessary copies to the person who
19 makes service.” FED. R. CIV. P. 4(c)(1). “If a defendant is not served within 90 days after
20 the complaint is filed, the court—on motion or on its own after notice to the plaintiff—
21 must dismiss the action without prejudice against that defendant or order that service be
22 made within a specified time.” FED. R. CIV. P. 4(m); *see also* S.D. Cal. Civ. R. 41.1(a)
23 (providing that “[a]ctions or proceedings which have been pending for more than six
24 months, without any proceeding or discovery having been taken therein during such period,
25 may, after notice, be dismissed by the court for want of prosecution”); *States S. S. Co. v.*
26 *Philippine Air Lines*, 426 F.2d 803, 804 (9th Cir. 1970) (affirming “[t]hat a court has power
27 to dismiss an action for want of prosecution on its own motion, both under Rule 41(b),
28 F.R.Civ.P., or under its local rule, or even in the absence of such rules, is settled in this

1 circuit”). “The exercise of the power to dismiss is discretionary and will be reversed only
2 for an abuse.” *States S. S. Co.*, 426 F.2d at 804. “In determining whether to dismiss a
3 claim for failure to prosecute or failure to comply with a court order, the Court must weigh
4 the following factors: (1) the public’s interest in expeditious resolution of litigation; (2) the
5 court's need to manage its docket; (3) the risk of prejudice to defendants/respondents; (4)
6 the availability of less drastic alternatives; and (5) the public policy favoring disposition of
7 cases on their merits.” *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002). “The
8 public’s interest in expeditious resolution of litigation always favors dismissal.” *Id.*

9 **IV. DISCUSSION**

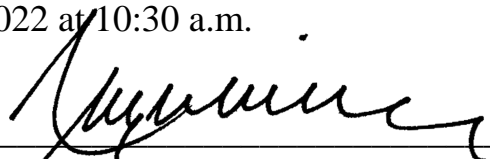
10 Only the Second Claim for Relief remains in this case. Over a year has elapsed, but
11 Plaintiff has taken no action to prosecute that claim. Thus, the Court orders Plaintiff to
12 show cause as to why that remaining claim should not be dismissed for want of prosecution,
13 which would result in a dismissal of the entire case.

14 **V. ORDER**

15 The Court orders Plaintiff to either file a Notice or Stipulation of Dismiss of this
16 case pursuant to Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure or appear for a
17 Status Conference in this case on January 24, 2022 at 10:30 a.m.

18 **IT IS SO ORDERED.**

19 DATED: December 29, 2021

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21 **HON. ROGER T. BENITEZ**
22 United States District Judge
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