IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

PRINCESS DAVID,	)	
Plaintiff,	)	**CASE NO. 3:23-cv-00044**
v.	)	
	)	
MIDTOWN GUEST HOUSE and RUDOLPH BROWN,	)	
Defendants.	)	

REPORT & RECOMMENDATION

On September 30, 2025, the Court conducted a hearing on Defendant Rudolpho A. Brown's ("Brown") motion [ECF 55] to show cause. The underlying motion had sought an order requiring Plaintiff Princess David ("David") to show cause why she should not be held in contempt and sanctioned for failure to appear at her properly noticed and scheduled deposition. [ECF 55] at 1. The motion—which was not opposed—was granted by the Court on July 21, 2025, with David having been directed to show cause why she should not be sanctioned by the Court for her failure to appear at her March 20, 2025 deposition and why such sanction or sanctions should not include the dismissal of her lawsuit. [ECF 61] at 2–3; *see also* [ECF 65] at 1–2. David was further ordered to appear at the hearing in person. [ECF 61] at 3; [ECF 65] at 2.

Counsel for David appeared remotely at the hearing,[1] with counsel for Brown having appeared in person. David, however, did not appear despite having been ordered to do so. For the reasons to follow, it is the undersigned's recommendation that the District Court dismiss the lawsuit due to David's repeated failure to actively participate in the discovery process and her lack of prosecution of her claims.

[1] Also before the Court on September 30, 2025, was counsel for David's motion [ECF 58] for leave to withdraw as counsel. That motion has been granted, with reference being made to the Court's separate order [ECF 72] of today's date.

I. BACKGROUND

David's failure to actively participate in the discovery process, as well as her failure to communicate with counsel, are not new phenomena. These issues were first brought to the Court's attention during a September 13, 2024 status conference. *See* [ECF 38]. During said conference, it was reported that in July 2024, the parties met and conferred per LRCi 37.1 to address several of David's discovery responses that were deficient. *See* [ECF 38] at 1. As a result of this meet and confer, David agreed to supplement her discovery responses. *Id*. Despite this agreement, however, no such supplementation had been made as of the September 13, 2024 status conference. According to Brown, this failure had impeded his ability to defend against the claims asserted. In particular, Brown was prevented from obtaining records of David that were associated with her medical treatment, employment, and tax returns. Counsel for David, in turn, acknowledged the delay, advising that the supplementation had not been forthcoming due to a lack of responsiveness from his client. Indeed, counsel further advised this lack of communication had impeded counsel's own ability to propound written discovery, as he required input from David. *Id*.

Upon learning of these issues, the Court instructed David's counsel to caution his client as to her need to be actively involved in the litigation and the potential for adverse ramifications and/or sanctions. [ECF 38] at 1. In doing so, the Court expressly noted that such sanctions could include the potential for dismissal of David's action for failure to prosecute. *Id*. at 1–2. The Court further ordered David to supplement her discovery responses by no later than September 30, 2024. *Id*. at 2; *see also* [ECF 36]. Despite this order, however, David did not supplement her responses until more than three months later, when she did so on January 6, 2025.[2] It was only after receiving these supplemental responses that Brown learned that David has used at least two other names, or

[2] The date of this supplementation was provided to the Court during the September 30, 2025 show cause hearing.

"aliases"—Tamar Harris and Ester Solomon—and that over the past decade, David has filed "over a dozen lawsuits, most of which seem to have been dismissed for lack of prosecution." [ECF 55] at 2.[3] Of these lawsuits, at least two—filed in the name of Tamar Harris—were brought against hotel defendants and asserted sexual assault/negligent security claims.[4] *Id.*; *see also* [ECF 56-1].

On March 4, 2025, Brown noticed David's deposition, with said deposition to be remotely conducted on March 20, 2025. [ECF 51]. This date was further reconfirmed by the parties the day before the deposition.[5] [ECF 55] at 3; *see also* [ECF 59–1] at 4–5. Notwithstanding having agreed upon the deposition date, receiving proper notice to same, and having reconfirmed the deposition date the day before, David did not appear. [ECF 55] at 3; *see also* [ECF 58] at 2 (ninth bullet-point); [ECF 59-1] at 5–7. While awaiting David's appearance at the deposition, her counsel further attempted to contact David via telephone and sent her an email as well, all to no avail. [ECF 59-1] at 5–7. At the show cause hearing, counsel for David stated that David reached out to counsel the day after the deposition (March 21, 2025), blaming a lack of technological knowledge and issues with her phone not working as excuses for her nonattendance. In response, David's counsel sought to reschedule the deposition and suggested that it be conducted in-person. According to counsel, however, the deposition was never rescheduled due to David's lack of availability and failure to communicate with her counsel. Ultimately, the fact discovery deadline expired on March 28, 2025, *see* [ECF 43], without David having presented for her deposition.

On May 7, 2025, David's counsel filed a motion [ECF 58] to withdraw, maintaining that David "has failed to substantially fulfill an obligation to cooperate regarding the presentment of

[3] During the show cause hearing, counsel for Brown advised that David identified the two "aliases" in one of the discovery responses that she supplemented.

[4] Similar causes of action are asserted in the present matter. *See* [ECF 27].

[5] During the show cause hearing, counsel for David acknowledged that the deposition was reconfirmed on March 19, 2025.

this case." [ECF 58] at 2. Counsel further detailed his repeated attempts to contact David, most of which "go unanswered or receive an automated response."[6] *Id*. Upon the Court inquiring whether counsel had communicated with David prior to his seeking to withdraw, counsel advised that he had.[7] In doing so, counsel told David he would be withdrawing due to her lack of participation in the lawsuit. Counsel further stated that David last communicated with him on June 19, 2025, when she sent counsel an email from an unknown email address. Although counsel replied to said email, David did not respond, nor has she had any other contact with counsel since that last communication. Despite David's unresponsiveness, counsel confirmed that he nonetheless forwarded each of the Court's orders [ECF 62] and [ECF 65] to her via email. He also sent multiple text messages to David regarding the September 30, 2025 hearing, as well as attempted several telephone calls related to same. From the Court's perspective, it too forwarded said orders to David via her last known mailing address, as well as via the email addresses that were provided to the Court. To this end, the Court received a signed certified mail receipt [ECF 67], which indicates that someone signed for the envelope containing [ECF 65].[8] *See* [ECF 66] and [ECF 67].

At the hearing, Brown's counsel requested dismissal of the case as well as attorney's fees as sanctions. In support thereof, counsel argued that any further delay would result in substantial prejudice to his client, who is a small business owner. Counsel noted that the assertion of sexual assault and battery is a particularly egregious allegation that carries with it not only a stigma, but possible criminal implications. Indeed, a police investigation was conducted in this matter, and

[6] According to counsel, he both emailed and called David on the following dates, having received no response: July 3, 2024; September 4, 2024; September 25, 2024; November 19, 2024; December 23, 2024; January 5, 2025; February 5, 2025; and March 13, 2025. Additionally, counsel scheduled a Zoom conference with David for July 18, 2024, but David did not appear. [ECF 58] at 2.

[7] This inquiry took place during the September 30, 2025 hearing.

[8] It is unclear from the return receipt whose signature is on said receipt, with the individual having also not printed their name.

while the results of the investigation did not inculpate Brown, counsel contends that the allegations have negatively affected Brown's reputation and his hotel business. Moreover, as more than four years have passed since the alleged incident, counsel cited concerns with fading witness memories, as well as the significant and ongoing financial burden that this litigation has imposed upon Brown. Counsel emphasized that Brown has emphatically denied any wrongdoing from the inception of this case and has had little opportunity to defend against the claims given David's unwillingness to participate in the discovery process.

Finally, when questioned by the Court, counsel for David acknowledged that his client has been cautioned on multiple occasions that her failure to participate in the litigation could result in her lawsuit being dismissed. Counsel further agreed that David has been provided multiple opportunities to present her case but has failed to do so. Lastly, counsel agreed with the Court that David's failures to participate in the litigation and prosecute her case were entirely of her own accord.

II. DISCUSSION

Under Rule 41(b), a district court may dismiss an action if a litigant has failed to prosecute or to comply with a court order. *See* Fed. R. Civ. P. 41(b). Unless otherwise stated, a dismissal for failure to prosecute under Rule 41(b) results in dismissal of the action with prejudice. *Matta v. Gov't of the V.I.*, 2016 WL 122954, at *1 (D.V.I. Jan. 8, 2016). A court must justify its decision under the multi-factor test set forth in *Poulis v. State Farm Fire & Casualty Company*, 747 F.2d 863 (3d Cir. 1984). Under *Poulis*, a court must weigh:

(1) the extent of the party's personal responsibility;

(2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery;

(3) a history of dilatoriness;

> (4) whether the conduct of the party or the attorney was willful or in bad faith;
>
> (5) the effectiveness of sanctions other than dismissal, which entails analysis of alternative sanctions; and
>
> (6) the meritoriousness of the claim or defense.

Id. at 868 (emphasis removed). These factors must be balanced, and not all factors need to be satisfied for the trial court to dismiss a complaint. *See Ware v. Rodale Press, Inc*., 322 F.3d 218, 221 (3d Cir. 2003). "Pro se litigants are not excused from being tested under the *Poulis* factors." *Marin v. Videos*, 663 F.App'x 108, 110 (3d Cir. 2016). Moreover, a Court "must provide the plaintiff with a full and fair opportunity to be heard regarding his failure to comply with the court's orders. Only after providing that opportunity should the District Court conduct an analysis of the *Poulis* factors to determine whether it should dismiss the plaintiff's case." *Briscoe v. Klaus*, 538 F.3d 252, 264 (3d Cir. 2008).

"Under our jurisprudence, the sanction of dismissal is reserved for those cases where the plaintiff has caused delay or engaged in contumacious conduct." *Guyer v. Beard*, 907 F.2d 1424, 1429 (3d Cir. 1990). The "decision to dismiss [is] firmly within the discretion of the district judge." *Mindek v. Rigatti*, 964 F.2d 1369, 1372 (3d Cir. 1992). However, *Poulis* does not set forth a "magic formula," *see Briscoe*, 538 F.3d 252 at 263, and "when a litigant's conduct makes adjudication of the case impossible, balancing under *Poulis* is unnecessary." *Bracy v. Marvinny*, 2022 WL 17555529, at *2, n.2 (D.V.I. Dec. 9, 2022) (quoting *Sebrell ex rel. Sebrell v. Philadelphia Police Dep't*, 159 F. App'x 371, 374 (3d Cir. 2005)); *see also Ho v. Lower Merion Sch. Dist.*, 2024 WL 1007453, at *2 n.5 (3d Cir. Mar. 8, 2024) ("[I]n dismissing for failure to prosecute, [the *Poulis*] analysis is not required where a litigant makes adjudication impossible ....").

"Adjudication of the case becomes impossible when litigants fail to update their contact information with the Court and fail to respond to Court orders." *Cruz v. Bryan*, No. CV 2016-0020, 2024 WL 1367825, at *2 (D.V.I. Mar. 31, 2024); *see also Bracy*, 2022 WL 17555529 at *2, n.2 (noting that balancing under *Poulis* was not required to warrant dismissal for failure to prosecute because adjudication of the case was made impossible by, *inter alia*, the plaintiff's failure to update his mailing address and contact information with the Court); *Jackson v. U.S. Bankr. Ct.*, 350 F. App'x 621, 624-25 (3d Cir. 2009) (*per curiam*) (finding that the litigant's abandonment of the case—where the litigant failed to respond to three pending motions despite the district court's grant of three *sua sponte* extensions of time—made it impossible for the district court to proceed, warranting a dismissal for failure to prosecute); *Sebrell ex rel. Sebrell*, 159 F. App'x at 374 (affirming dismissal without assessment of *Poulis* factors where plaintiff refused to cooperate with the court's order that she complete required forms to effectuate service despite clear instructions and warnings that she would face dismissal for failure to comply with court's order).

Here, there is no question that David's conduct has made adjudication of this case impossible, thereby negating the need to address the *Poulis* factors when assessing whether to dismiss the complaint. Since its inception, David's involvement in the lawsuit has been sporadic at best. She failed to timely respond to written discovery, further flouting the Court's order [38] regarding same. She failed to appear for her own deposition and failed to reschedule her deposition, despite her counsel's attempts to do so. She has repeatedly chosen not to communicate with her counsel, either by not being responsive or by not providing her counsel with her current contact information. David further stopped having any communication with her counsel since June 19, 2025. When counsel advised that he would seek to withdraw his representation should David not actively participate in her own litigation, she disregarded this warning. Likewise, when the Court

cautioned David on September 13, 2024 that her continued failure to be actively involved in the litigation could lead to adverse ramifications and/or sanctions, including the potential for dismissal of her lawsuit, she ignored this warning as well. Moreover, despite knowing that her counsel had filed a motion to withdraw, David apparently failed to monitor her lawsuit, nor did she appear for the show cause hearing.

In its order of July 21, 2025, the Court provided explicit instructions to David as to her need to appear for the show cause hearing. [ECF 61] at 2; *Sebrell ex rel. Sebrell*, 159 Fed. App'x at 373. In this regard, the order provided as follows:

> At the show cause hearing, David is to be prepared to argue why she should not be sanctioned for her failure to fully participate in the discovery phase of her litigation, including, but not limited to, her failure to appear for her own deposition, and why such sanction or sanctions should not include the dismissal of her lawsuit.

[ECF 61] at 2. A similar instruction was provided in the Court's July 29, 2025 order as well. [ECF 65] at 1–2. Given the simplicity of the language, it is inconceivable that David could not have understood the consequences of her decision not to comply.[9] *See Spain v. Gallagos*, 36 F.3d 439, 454-55 (3d Cir. 1994). Nevertheless, David failed to comply and did not appear at the hearing. Because David's conduct in choosing not to participate in the discovery process, as well as her conscious choice not to communicate with her counsel and to disobey the Court's orders was contumacious, this Court is satisfied that dismissal is appropriate without evaluating the *Poulis* factors. *See Guyer*, 907 F.3d 1424 at 1429.

Nevertheless, even if the Court were to consider the *Poulis* factors, almost all of these factors point to dismissal. Factors one, three, and four relate to David's repeated failure—and not

[9] This, of course, assumes David received a copy of the order, which was not only provided to her by her own counsel via the contact information David provided said counsel, but was also forwarded to David by the Court via both certified mail, return receipt requested, as well as via email at the email addresses that were provided to the Court.

that of her counsel—to participate in discovery and to comply with Court orders, which weigh heavily in favor of dismissal. David's failure to attend her deposition and her dilatoriness in supplementing discovery was solely of her own accord. Not appearing at the show cause hearing further evinces a willful choice not to take an active role in her litigation, even when David was well aware that her counsel was seeking to withdraw his representation.[10] Without question, David's actions (or inactions) are dilatory in that she is not moving her case forward. It is also notable that David's counsel acknowledges his own client's lack of cooperation with the prosecution of her case. *See Drozd v. Padron*, 2015 WL 507167, at *7 (M.D.Pa. Feb. 6, 2015). The record is thus clear that David has refused to effectively communicate with counsel, failed to appear at depositions, and failed to timely respond to written discovery. [ECF 55] at 3; *see also* [ECF 58] at 2 (ninth bullet-point); [ECF 59-1]. *See Drozd*, 2015 WL 507167, at *7–8 (finding consistent refusal to communicate with counsel and failure to appear at scheduled depositions a sufficient history of dilatoriness).

As for the second factor, "[p]rejudice ... includes deprivation of information through noncooperation with discovery, and costs expended obtaining court orders to force compliance with discovery." *Adams v. Trs. of N.J. Brewery Emps.' Pension Tr. Fund*, 29 F.3d 863, 874 (3d Cir. 1994) (citation omitted). "[P]rejudice is not limited to 'irremediable' or 'irreparable' harm." *Briscoe*, 538 F.3d 252 at 259 (citations omitted). "It also includes 'the burden imposed by impending a party's ability to prepare effectively a full and complete trial strategy." *Id*. (citing *Ware*, 322 F.3d 218 at 222). *See Beale v. Wetzel*, 2016 WL 6573854, at *2 (W.D.Pa. Nov. 7, 2016) (finding a plaintiff had been prejudiced by their inability to depose a defendant in the action).

[10] Again, a hearing on the motion to withdraw was also conducted on September 30, 2025.

As noted above, Brown argues that the inability to depose David is highly prejudicial, as it has deprived him of the most necessary discovery, that of the opposing party. The Court agrees. Without David's deposition—especially in light of her apparent litigious nature and the similarity of claims that she has asserted in other matters—Brown's efforts to effectively prepare a full and complete trial strategy has been thwarted. As in *Poulis*, "defendant[s] encountered lack of cooperation from the plaintiff in areas where the plaintiff should cooperate under the spirit of the federal procedural rules." *Poulis*, 747 F.2d at 868. Thus, this factor weighs heavily in favor of dismissal as well.

With respect to the meritoriousness of David's claims, these have been called into question by Brown. Such doubt, at least at this junction, is speculative, with the Court finding this factor weighing in favor against dismissal. As for the final factor—the effectiveness of sanctions other than dismissal—the Court finds that no other sanction would be effective. David has been placed on notice for more than a year that her lack of participation could result in the dismissal of her lawsuit. This warning has had no impact on David's behavior. David has repeatedly failed to participate in discovery, she has repeatedly failed to communicate with her counsel, having ceased all communication since June 19, 2025, and has disregarded orders of the Court. Moreover, these actions and inactions rest entirely upon David. Stated simply, David has made adjudication of this case impossible and has only herself to blame. Therefore, any lesser sanction would not further the interests of justice. *See Guyer*, 907 F.2d 1424 at 1430. Accordingly, even were the *Poulis* factors to be considered, the balancing of these factors weigh heavily in favor of dismissal.

III. CONCLUSION

Based on the preceding analysis, the Court finds that the sanction of dismissal of the lawsuit is warranted. As such, the Court **RECOMMENDS** that the lawsuit be **DISMISSED IN ITS ENTIRETY**.

Any objections to this Report and Recommendation must be filed in writing within 14 days of receipt of this notice. Failure to file objections within the specified time shall bar the aggrieved party from attacking such Report and Recommendation before the assigned District Court Judge. 28 U.S.C. § 636(b)(1); LRCi 72.3.

Finally, the Clerk of Court is **DIRECTED** to **SERVE** a copy of this Order on Plaintiff Princess David via **U.S. Mail via Certified Mail, Return Receipt Requested**, at the following address: 3017 NW 30th Ter, Fort Lauderdale, FL 33311, as well as via email at guessjeniese@gmail.com and noww75442@gmail.com.

ENTER:

Dated: October 15, 2025

/s/ G. Alan Teague
G. ALAN TEAGUE
U.S. MAGISTRATE JUDGE