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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ELIZABETH BARAJAS, et al.,
Plaintiffs,
v.
COUNTY OF YOLO,
Defendant.

No. 2:14-cv-01587-GEB-AC

FINDINGS & RECOMMENDATIONS

On July 7, 2014, plaintiffs filed this action and moved for permission to proceed in forma pauperis. ECF Nos. , 21. On July 31, 2014, the court denied plaintiffs’ request and ordered their complaint stricken because both documents were signed exclusively by a non-attorney “agent” claiming to represent them. ECF No. 3. On September 8, 2014, plaintiff Elizabeth Barajas filed a motion seeking an extension of time to file an amended complaint. ECF No. 5. That request not being signed by any other plaintiff, the court granted plaintiff Elizabeth Barajas’ request as to her only, on September 15, 2014. ECF No. 6. On October 3, 2014, all four plaintiffs filed a second motion for extension of time to secure counsel. ECF No. 7. The court granted plaintiffs’ request on October 9, 2014, and directed them to file an amended complaint by October 31, 2014. ECF No. 8. On November 7, 2014, the court ordered plaintiff to show cause within fourteen (14) days why their claims should not be dismissed for failure to prosecute. ECF No. 9. Plaintiffs have yet to respond to the court’s order.

1 Pursuant to Federal Rule of Civil Procedure 41(b), a district court may dismiss an action
2 for failure to prosecute, failure to comply with the Federal Rules of Civil Procedure, failure to
3 comply with the court’s local rules, or failure to comply with the court’s orders. See, e.g.,
4 Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991) (recognizing that a court “may act sua sponte
5 to dismiss a suit for failure to prosecute”); Hells Canyon Preservation Council v. U.S. Forest
6 Serv., 403 F.3d 683, 689 (9th Cir. 2005) (recognizing that courts may dismiss an action pursuant
7 to Federal Rule of Civil Procedure 41(b) sua sponte for a plaintiff’s failure to prosecute or comply
8 with the rules of civil procedure or the court’s orders); Ferdik v. Bonzelet, 963 F.2d 1258, 1260
9 (9th Cir. 1992) (“Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss
10 an action for failure to comply with any order of the court.”); Pagtalunan v. Galaza, 291 F.3d 639,
11 642-43 (9th Cir. 2002) (affirming district court’s dismissal of case for failure to prosecute when
12 habeas petitioner failed to file a first amended petition). This court’s Local Rules are in accord.
13 See E.D. Local Rule 110 (“Failure of counsel or of a party to comply with these Rules or with any
14 order of the Court may be grounds for imposition by the Court of any and all sanctions authorized
15 by statute or Rule or within the inherent power of the Court.”); E.D. Local Rule 183(a) (providing
16 that a pro se party’s failure to comply with the Federal Rules of Civil Procedure, the court’s Local
17 Rules, and other applicable law may support, among other things, dismissal of that party’s
18 action).

19 A court must weigh five factors in determining whether to dismiss a case for failure to
20 prosecute, failure to comply with a court order, or failure to comply with a district court’s local
21 rules. See, e.g., Ferdik, 963 F.2d at 1260. Specifically, the court must consider:

- 22 (1) the public’s interest in expeditious resolution of litigation; (2)
23 the court’s need to manage its docket; (3) the risk of prejudice to
24 the defendants; (4) the public policy favoring disposition of cases
on their merits; and (5) the availability of less drastic alternatives.

25 Id. at 1260-61; accord Pagtalunan, 291 F.3d at 642-43; Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir.
26 1995), cert. denied, 516 U.S. 838 (1995). The Ninth Circuit Court of Appeals has stated that
27 “[t]hese factors are not a series of conditions precedent before the judge can do anything, but a
28 way for a district judge to think about what to do.” In re Phenylpropanolamine (PPA) Prods.

1 Liab. Litig., 460 F.3d 1217, 1226 (9th Cir. 2006).

2 Although involuntary dismissal can be a harsh remedy, on balance the five relevant
3 factors weigh in favor of dismissal of this action. The first two factors strongly support dismissal.
4 Plaintiffs' failure to serve defendant and to respond to this court's order strongly suggests that
5 plaintiffs have abandoned this action or are not interested in seriously prosecuting it. See, e.g.,
6 Yourish v. Cal. Amplifier, 191 F.3d 983, 990 (9th Cir. 1999) ("The public's interest in
7 expeditious resolution of litigation always favors dismissal."). Any further time spent by the
8 court on this case, which plaintiffs have demonstrated a lack of any serious intention to pursue,
9 will consume scarce judicial resources and take away from other active cases. See Ferdik, 963
10 F.2d at 1261 (recognizing that district courts have inherent power to manage their dockets without
11 being subject to noncompliant litigants).

12 In addition, the third factor, which considers prejudice to a defendant, should be given
13 some weight. See Ferdik, 963 F.2d at 1262. Although the court's docket does not reflect that a
14 complaint has been served upon defendant, the defendant remains named in a lawsuit. It is
15 difficult to quantify the prejudice suffered by defendant here; however, it is enough that defendant
16 has been named in a lawsuit that plaintiffs have effectively abandoned. At a minimum, defendant
17 has been prevented from attempting to resolve this case on the merits by plaintiffs' unreasonable
18 delay in prosecuting this action. Unreasonable delay is presumed to be prejudicial. See, e.g., In
19 re Phenylpropanolamine (PPA) Prods. Liab. Litig., 460 F.3d at 1227.

20 The fifth factor, which considers the availability of less drastic measures, also supports
21 dismissal of this action. The court has actually pursued remedies that are less drastic than a
22 recommendation of dismissal, including providing plaintiffs with additional time to file an
23 amended complaint. See Malone v. U.S. Postal Serv., 833 F.2d 128, 132 (9th Cir. 1987)
24 ("[E]xplicit discussion of alternatives is unnecessary if the district court actually tries alternatives
25 before employing the ultimate sanction of dismissal."), cert. denied, 488 U.S. 819 (1988). Having
26 failed to receive a response from plaintiffs, the court finds no suitable alternative to a
27 recommendation for dismissal of this action.

28 The court also recognizes the importance of giving due weight to the fourth factor, which

1 addresses the public policy favoring disposition of cases on the merits. However, for the reasons
2 set forth above, factors one, two, three, and five strongly support a recommendation of dismissal
3 of this action, and factor four does not materially counsel otherwise. Dismissal is proper “where
4 at least four factors support dismissal or where at least three factors ‘strongly’ support dismissal.”
5 Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998) (citations and quotation marks
6 omitted). Under the circumstances of this case, the other relevant factors outweigh the general
7 public policy favoring disposition of actions on their merits. See Ferdik, 963 F.2d at 1263.

8 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed with
9 prejudice pursuant to Federal Rule of Civil Procedure 41(b) and 4(m) and Local Rules 110 and
10 183(a).

11 These findings and recommendations are submitted to the United States District Judge
12 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
13 after being served with these findings and recommendations, any party may file written
14 objections with the court and serve a copy on all parties. 28 U.S.C. § 636(b)(1); see also E.D.
15 Local Rule 304(b). Such a document should be captioned “Objections to Magistrate Judge's
16 Findings and Recommendations.” Any response to the objections shall be filed with the court
17 and served on all parties within fourteen days after service of the objections. E.D. Local Rule
18 304(d). Failure to file objections within the specified time may waive the right to appeal the
19 District Court’s order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst,
20 951 F.2d 1153, 1156-57 (9th Cir. 1991).

21 DATED: November 24, 2014

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23 ALLISON CLAIRE
24 UNITED STATES MAGISTRATE JUDGE
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