

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MARIA H. ALVAREZ MUNOZ,
Plaintiff,
v.
NANCY A. BERRYHILL, Acting
Commissioner of Social Security,
Defendant.

Case No. LA CV 16-9476 JCG

**MEMORANDUM OPINION AND
ORDER DISMISSING ACTION,
WITHOUT PREJUDICE, FOR
FAILURE TO PROSECUTE AND
COMPLY WITH COURT ORDERS**

I.

BACKGROUND

On December 22, 2016, plaintiff Maria H. Alvarez Munoz (“Plaintiff”) filed a complaint pursuant to the Social Security Act (“Complaint”) and a Request to Proceed *In Forma Pauperis* (“Request”). [Dkt. Nos. 1, 3.]

On May 11, 2017, Plaintiff’s counsel filed a Motion to Withdraw as Attorney of Record (“Motion”). [Dkt. No. 17.]

On May 12, 2017, the Court granted the Motion, and stayed this action for 45 calendar days, so that Plaintiff could secure successor counsel. [Dkt. No. 18.] The

1 Court ordered the parties to submit a joint report to the Court regarding the status of
2 this action on or before June 26, 2017. (*Id.*)

3 On June 26, 2017, Defendant filed a status report, which Plaintiff did not join,
4 stating that on June 22, 2017, Defendant asked a Spanish-speaking colleague to call
5 Plaintiff on her behalf. [Dkt. No. 19 at 2.] Plaintiff informed Defendant’s colleague
6 that she had not obtained counsel. (*Id.*)

7 On June 29, 2017, the Court issued an Order to Show Cause (“OSC”) directing
8 Plaintiff to show cause, no later than July 13, 2017, why this action should not be
9 dismissed for failure to prosecute and comply with court orders. [Dkt. No. 20.]
10 Plaintiff was warned that her “**failure to timely respond to this Order may result in**
11 **the dismissal of this action for failure to prosecute and/or failure to comply with**
12 **court orders, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.”**
13 (*Id.* at 1) (emphasis in original).

14 As of the date of this Order, Plaintiff has not filed any response to the OSC.

15 II.

16 DISCUSSION

17 Under Federal Rule of Civil Procedure 41(b), the Court may *sua sponte* dismiss
18 an action for failure to prosecute and comply with court orders. *Link v. Wabash R.R.*
19 *Co.*, 370 U.S. 626, 629-33 (1962); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-63 (9th
20 Cir. 1992). “District courts have the inherent power to control their dockets and, in the
21 exercise of that power they may impose sanctions including, where appropriate,
22 dismissal of a case.” *Ferdik*, 963 F.2d at 1260 (internal quotation marks, brackets, and
23 ellipsis omitted).

24 In determining whether to dismiss a case under Rule 41(b), a court must weigh
25 five factors:

- 26 (1) the public’s interest in expeditious resolution of litigation;
- 27 (2) the court’s need to manage its docket;
- 28 (3) the risk of prejudice to the defendants;

- (4) the public policy favoring disposition of cases on their merits; and
- (5) the availability of less drastic alternatives.

Id. at 1260-61. The Court addresses each in turn.

In this case, both the first factor (the public’s interest in expeditious resolution of litigation) and the second factor (the court’s need to manage its docket) strongly favor dismissal. Here, Plaintiff failed to respond to the OSC. In short, Plaintiff’s “noncompliance has caused [this] action to come to a complete halt, thereby allowing [Plaintiff] to control the pace of the docket rather than the Court.” *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999) (quoting, with approval, district court’s order dismissing action). Plaintiff’s inaction frustrates the public’s interest in the expeditious resolution of litigation, as well as the Court’s need to manage its own docket. *See Ferdik*, 963 F.2d at 1260-61.

The third factor (the risk of prejudice to the defendant) also favors dismissal. Although the mere pendency of a lawsuit is not prejudicial in and of itself, a failure to provide a reasonable excuse for defaulting on a court order can indicate sufficient prejudice to warrant dismissal. *See Yourish*, 191 F.3d at 991-92 (“Plaintiff[’s] paltry excuse for his default on the judge’s order indicates that there was sufficient prejudice to Defendants . . .”). Here, Plaintiff has provided no explanation – much less a reasonable one – for her failure to respond to the OSC. *See id.*; *Sw. Marine Inc. v. Danzig*, 217 F.3d 1128, 1138 (9th Cir. 2000) (“Unreasonable delay is the foundation upon which a court may presume prejudice.”).

The fourth factor (the public policy favoring disposition of cases on their merits) weighs against dismissal, as it inevitably will when an action is dismissed without reaching the merits. *See Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002).

Finally, the Court finds that the fifth factor (the availability of less drastic alternatives) supports dismissal. As a rule, a district court’s warning that a party’s “failure to obey a court order will result in dismissal can itself meet the ‘consideration of alternatives’ requirement.” *In re Phenylpropanolamine Prods. Liab. Litig.*, 460

1 F.3d 1217, 1229 (9th Cir. 2006). Here, the Court expressly warned Plaintiff that her
2 failure to respond to the OSC could result in a recommendation that this action be
3 dismissed. (OSC at 1.) Still, Plaintiff failed to respond. Thus, “[g]iven Plaintiff’s
4 demonstrated unwillingness to participate in [her] own litigation, sanctions other than
5 dismissal do not appear to be appropriate at this time.” *Perdomo v. Colvin*, 2014 WL
6 4060013, at *2 (C.D. Cal. Aug. 14, 2014).


7 In sum, four out of five factors support dismissal, making it appropriate at this
8 juncture. *See Yourish*, 191 F.3d at 990 (dismissal appropriate where “at least four
9 factors support dismissal, or where at least three factors strongly support dismissal”)
10 (internal quotation marks and ellipsis omitted).

11 **III.**

12 **RECOMMENDATION**

13 For the foregoing reasons, IT IS ORDERED THAT the above-captioned action
14 is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute and comply with
15 the Court’s Orders.

16
17 DATED: July 27, 2017

18
19 
20 _____
21 Hon. Jay C. Gandhi
22 United States Magistrate Judge
23
24
25
26
27
28