

MEMORANDUM OPINION AND ORDER

1 On May 11, 2020, Defendant filed an Answer and the Certified Administrative
2 Record.

3 On August 6, 2020, Plaintiff filed her first request to extend the briefing schedule set
4 forth in the CMO, which the Court granted on August 10, 2020. Plaintiff's deadline to
5 submit her portions of the JS was extended to August 25, 2020.

6 On September 14, 2020, Plaintiff filed her second request to extend the briefing
7 schedule set forth in the CMO, which the Court granted that same day. Plaintiff's deadline
8 to submit her portions of the JS was extended to October 25, 2020.

9 On November 13, 2020, Defendant filed a Notice of Non-Receipt of Plaintiff's Initial
10 Portions of Joint Submission and Declaration stating that Plaintiff had not forwarded her
11 portions of the JS to Defendant as required by the CMO and, therefore, the JS could not be
12 filed.

13 On November 17, 2020, the Court issued an Order to Show Cause ("OSC") why this
14 case should not be dismissed for failure to prosecute. Plaintiff was ordered to respond to
15 the OSC no later than December 1, 2020. She was warned that failure to submit her
16 portions of the JS to Defendant or respond to the OSC could result in a recommendation
17 that this action be dismissed.

18 To date, Plaintiff has failed to respond to the OSC.

19 **DISCUSSION**

20 The Court has the inherent power to achieve the orderly and expeditious disposition
21 of cases by dismissing actions pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute and
22 failure to comply with a court order. See Link v. Wabash R.R. Co., 370 U.S. 626, 629-30
23 (1962); see also Pagtalunan v. Galaza, 291 F.3d 639, 640 (9th Cir. 2002). A dismissal
24 under Rule 41(b) - other than for lack of jurisdiction, improper venue, or failure to join a
25 party - operates as an adjudication on the merits.

26 Because dismissal is a harsh penalty, the Court must weigh the following factors
27 when determining whether to dismiss an action for failure to comply with a court order or
28 failure to prosecute: (1) the public's interest in the expeditious resolution of litigation; (2) the

1 Court's need to manage its docket; (3) the risk of prejudice to the defendant/respondent; (4)
2 the public policy favoring disposition of cases on their merits, and (5) the availability of less
3 drastic sanctions. Pagtalunan, 291 F.3d at 642; Al-Torki v. Kaempfen, 78 F.3d 1381,
4 1384-85 (9th Cir. 1996); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992).
5 Having weighed these factors, the Court finds that dismissal of the action without prejudice
6 is warranted.

7 In the instant action, the first two factors – public interest in expeditious resolution of
8 litigation and the court's need to manage its docket – weigh in favor of dismissal. Plaintiff
9 has failed to submit her portions of the JS to Defendant or respond to the OSC, despite
10 having been ordered to do so repeatedly and having been allowed ample time. Plaintiff's
11 non-compliance hinders the Court's ability to move this case toward disposition and
12 indicates that Plaintiff does not intend to litigate this action diligently. Her failure to respond
13 to the OSC or submit her portions of the JS to Defendant has interfered with the public's
14 interest in the expeditious resolution of this litigation and the Court's need to manage its
15 docket.

16 The third factor – prejudice to defendants – also weighs in favor of dismissal. A
17 rebuttable presumption of prejudice to a defendant arises when a plaintiff unreasonably
18 delays prosecution of an action. See Eisen, 31 F.3d at 1452-53. Nothing suggests such a
19 presumption is unwarranted in this case. Moreover, Defendant has been required to
20 expend substantial resources to defend this action, including filing an Answer to the
21 Complaint, gathering and submitting the Certified Administrative Record, and filing the
22 notice of non-receipt. Thus, the Court finds that Defendant has been prejudiced by
23 Plaintiff's failure to litigate this case diligently.

24 The fourth factor – public policy in favor of deciding cases on the merits – ordinarily
25 weighs against dismissal. However, it is a plaintiff's responsibility to move the case toward
26 disposition at a reasonable pace and avoid dilatory and evasive tactics. See Morris v.
27 Morgan Stanley, 942 F.2d 648, 652 (9th Cir. 1991). Plaintiff has not discharged this
28 responsibility despite having been (1) instructed on her responsibilities, (2) granted

1 sufficient time in which to discharge them, and (3) warned of the consequences of failure to
2 do so. Under these circumstances, the policy favoring resolution of disputes on the merits
3 does not outweigh Plaintiff's failure to obey a court order and submit her portions of the JS
4 to Defendant or respond to the OSC within the time granted.

5 The fifth factor – availability of less drastic sanctions – also weighs in favor of
6 dismissal. The Court cannot move the case toward disposition without Plaintiff's
7 compliance with court orders or participation in this litigation. Plaintiff has shown she is
8 either unwilling or unable to comply with court orders, rules of civil procedure, and local
9 rules by failing to submit her portions of the JS to Defendant or respond to the OSC.

10 Finally, while dismissal should not be entered unless a plaintiff has been notified that
11 dismissal is imminent, see West Coast Theater Corp. v. City of Portland, 897 F.2d 1519,
12 1523 (9th Cir. 1990), Plaintiff has been warned that her failure to submit her portions of the
13 JS to Defendant or respond to the OSC could result in dismissal of this action. Accordingly,
14 dismissal of this action without prejudice is warranted.

15 **ORDER**

16 **IT IS ORDERED** that Judgment shall be entered dismissing this action without
17 prejudice.

18
19 DATED: December 7, 2020

/s/ John E. McDermott
JOHN E. MCDERMOTT
UNITED STATES MAGISTRATE JUDGE