

1 time to respond to the complaint by 30 days. (See Dkt. 12, Stipulation to Extend Time to Respond
2 to Initial Complaint). Defendant’s answer was thus due no later than December 18, 2020. As of
3 the date of this Order, defendant has not answered the complaint, nor has plaintiff filed a request
4 for entry of default.¹ (See, generally, Dkt.).

5 A district court may dismiss an action for failure to prosecute or to comply with court orders.
6 Fed. R. Civ. P. 41(b); Link, 370 U.S. at 629-30, 82 S.Ct. at 1388 (authority to dismiss for failure
7 to prosecute necessary to avoid undue delay in disposing of cases and congestion in court
8 calendars); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992) (district court may dismiss
9 action for failure to comply with any court order). Dismissal, however, is a severe penalty and
10 should be imposed only after consideration of the relevant factors in favor of and against this
11 extreme remedy. Thompson v. Housing Auth. of Los Angeles, 782 F.2d 829, 831 (9th Cir.1986).
12 These factors include: “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s
13 need to manage its docket; (3) the risk of prejudice to defendants/respondents; (4) the availability
14 of less drastic alternatives; and (5) the public policy favoring disposition of cases on their merits.”
15 Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002) (citing Ferdik, 963 F.2d at 1260-61); see
16 Applied Underwriters, Inc. v. Lichtenegger, 913 F.3d 884, 891 (9th Cir. 2019) (“By its plain text,
17 a Rule 41(b) dismissal . . . requires ‘a court order’ with which an offending plaintiff failed to
18 comply.”). “Although it is preferred, it is not required that the district court make explicit findings
19 in order to show that it has considered these factors and [the Ninth Circuit] may review the record
20 independently to determine if the district court has abused its discretion.” Ferdik, 963 F.2d at
21 1261.

22 Having considered the Pagtalunan factors, the court is persuaded that this action should
23 be dismissed for failure to comply with a court order and failure to prosecute. Plaintiff’s failure to
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25 ¹ On December 29, 2020, the parties filed a notice of provisional settlement, which was
26 stricken by the court on January 4, 2021. (See Dkt. 15, Court’s Order of January 4, 2021). In its
27 order striking the provisional notice of settlement, the court again admonished the parties that
28 “[f]ailure to comply with all case deadlines and the orders issued by the court in this case shall
result in the imposition of sanctions, including but not limited to, the dismissal of the action for
failure to comply with any applicable rules and/or court orders.” (Dkt. 15, Court’s Order of January
4, 2021) (citing Fed. R. Civ. P. 41(b); Link, 370 U.S. at 629-30, 82 S.Ct. at 1388)).

1 file a request for entry of default hinders the court's ability to move this case toward disposition and
2 indicates that plaintiff does not intend to litigate this action. In other words, plaintiff's
3 "noncompliance has caused [this] action to come to a complete halt, thereby allowing [her] to
4 control the pace of the docket rather than the Court." Yourish v. Cal. Amplifier, 191 F.3d 983, 990
5 (9th Cir. 1999) (internal quotation marks omitted). Further, plaintiff was warned that failure to file
6 a request for entry of default would result in a dismissal of the action for lack of prosecution and
7 failure to comply with a court order. (See Dkt. 10, Court's Order of November 10, 2020, at 2); see
8 also Ferdik, 963 F.2d at 1262 ("[A] district court's warning to a party that his failure to obey the
9 court's order will result in dismissal can satisfy the consideration of alternatives requirement.")
10 (internal quotation marks omitted). Thus, having considered the Pagtalunan factors, the court is
11 persuaded that the instant action should be dismissed for failure to comply with a court order and
12 failure to prosecute.

13 Based on the foregoing, IT IS ORDERED that judgment be entered dismissing this action,
14 without prejudice, for failure to prosecute and comply with the orders of the court.

15 Dated this 8th day of January, 2021.

16 /s/
17 Fernando M. Olguin
18 United States District Judge
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