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

BRIAN WHITAKER,
Plaintiff,
v.
ANOTHER PROJECT LLC,
Defendant.

Case No. CV 20-10112 FMO (JEMx)
**ORDER DISMISSING ACTION WITHOUT
PREJUDICE**

On November 30, 2020, the court issued a Standing Order Re: ADA Accessibility Cases (see Dkt. 10, Court’s Order of November 30, 2020), which ordered plaintiff Brian Whitaker (“plaintiff”) to file a request for entry of default no later than seven days after the time the response to the complaint would have been due by the defendant. (Id. at 2). The court admonished plaintiff that “failure to seek entry of default within seven [] days after the deadline to file a response to the complaint shall result in the dismissal of the action and/or the defendant against whom entry of default should have been sought.” (Id. at 2-3) (citing Fed. R. Civ. P. 41(b); Link v. Wabash R.R. Co., 370 U.S. 626, 629-30, 82 S.Ct. 1386, 1388 (1962)).

Here, defendant Another Project LLC (“defendant”) was served with the summons and complaint on November 17, 2020, by substituted service, and the summons and complaint were mailed to defendant on November 18, 2020. (See Dkt. 9, Proof of Service at 1). Accordingly, defendant’s responsive pleading to the Complaint was due no later than December 21, 2020. See

1 Cal. Civ. Proc. Code § 415.20(a) (Substituted service “is deemed complete on the 10th day after
2 the mailing”); Fed. R. Civ. P. 12(a); Fed. R. Civ. P. 4(e). As of the date of this Order, defendant
3 has not answered the Complaint, nor has plaintiff filed a request for entry of default. (See,
4 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
24 file a request for entry of default hinders the court’s ability to move this case toward disposition and
25 indicates that plaintiff does not intend to litigate this action. In other words, plaintiff’s
26 “noncompliance has caused [this] action to come to a complete halt, thereby allowing [him] to
27 control the pace of the docket rather than the Court.” Yourish v. Cal. Amplifier, 191 F.3d 983, 990
28 (9th Cir. 1999) (internal quotation marks omitted). Further, plaintiff was warned that failure to file

