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

DAWN DEVORE, et al,)	NO. SACV 20-0563-ODW (KS)
Plaintiff,)	
v.)	ORDER: DISMISSING ACTION FOR
)	FAILURE TO PROSECUTE
UNITED STATES DEPARTMENT)	
OF DEFENSE, et al,)	
Defendants.)	
)	

INTRODUCTION

On March 19, 2020, Dawn Devore, Steffini Sellers, and George Anthony Ban III (collectively, “Plaintiffs”), California residents proceeding *pro se*, commenced this lawsuit against the United States Department of Defense, several other federal agencies, Northrop Grumman, and, *inter alia*, 20 unknown Doe defendants. (Dkt. No. 1.) In the original Complaint, Plaintiffs alleged that the Obama Administration, “using NASA,” coordinated with Russia, China, “and more” to implement a global nonconsensual remote medical research program pursuant to which “nanosensor devices” were implanted in the bodies of Plaintiff Devore and her children. (*Id.*)

1 On May 18, 2020, the Court dismissed the Complaint with leave to amend and ordered
2 Plaintiffs to file a First Amended Complaint. (Dkt. No. 5.) On June 22, 2020, Plaintiffs filed
3 a First Amended Complaint (Dkt. No. 6), which the Court also dismissed with leave to amend
4 (Dkt. No. 23). On September 9, 2020, Plaintiffs filed a Second Amended Complaint (Dkt. No.
5 27) and a Motion to Supplement their Second Amended Complaint (Dkt. No. 28). On October
6 27, 2020, the Court granted Plaintiffs one final opportunity to file an amended complaint
7 correcting the defects identified by the Court, thereby effectively granting Plaintiffs' Motion
8 to Supplement. (Dkt. No. 29.) The Court ordered Plaintiffs to file their Third Amended
9 Complaint no later than December 8, 2020. (*Id.*) On December 7, 2020, United States
10 Magistrate Judge Patricia Donahue recused herself and the case was reassigned to United
11 States Magistrate Judge Karen L. Stevenson. (Dkt. No. 31.)

12
13 On December 30, 2020, after more than three weeks had passed since Plaintiffs'
14 deadline for filing a Third Amended Complaint ("TAC") and no TAC had been filed, the Court
15 ordered Plaintiffs to show cause no later than January 13, 2021 why the Court should not
16 recommend dismissal for failure to prosecute based on Plaintiffs' failure to comply with the
17 Court's prior orders. (Dkt. No. 33.) On February 5, 2021, after more than three weeks had
18 passed without any communication from Plaintiffs, the Court issued a Report and
19 Recommendation in which it recommended dismissal for failure to prosecute. (Dkt. No. 35.)
20 Plaintiffs were ordered to file objections, if any, no later than February 26, 2021. (Dkt. No.
21 36.)

22
23 On February 8, 2021, Plaintiffs filed a Response to the Court's December 30, 2020
24 Order to Show Cause in which they asked the Court to continue the deadlines for filing a Third
25 Amended Complaint. (Dkt. No. 36.) Out of an extraordinary abundance of caution and in the
26 interests of justice, the Court granted Plaintiffs a one week extension of the deadline—through
27 the close of business on March 5, 2021—to file either objections to the Court's Report and
28

1 Recommendation or a Third Amended Complaint correcting the defects in pleading previously
2 identified by the Court.

3
4 On March 8, 2021, three days after the March 5, 2021 deadline, Plaintiffs filed a Third
5 Amended Complaint (the “TAC”) (Dkt. No. 44) and, separately, a signature page (Dkt. No.
6 45). In the TAC, Plaintiffs continued to allege, *inter alia*, that Congress authorized the
7 implantation of medical monitoring devices in U.S. citizens’ bodies without their knowledge
8 or consent, and Plaintiff Devore had three of these devices surgically removed from her body.
9 (*Id.* at 9, ¶¶ 27-30.) In the interests of justice and out of an abundance of caution, the Court
10 vacated the Report and Recommendation, dismissed the TAC for failure to state a claim, and
11 gave Plaintiffs one final opportunity to file a viable complaint. (Dkt. No. 46.) The Court
12 ordered Plaintiff to file a Fourth Amended Complaint correcting the defects identified by the
13 Court no later than April 19, 2021. (*Id.*) On May 14, 2021, after more than three weeks had
14 passed since Plaintiffs’ April 19, 2021 deadline and no Fourth Amended Complaint had been
15 filed, the Court ordered Plaintiff to show cause no later than May 21, 2021 why the action
16 should not be dismissed for failure to prosecute. (Dkt. No. 47.) The Court stated that it did
17 not anticipate granting any additional extensions and Plaintiffs’ failure to timely comply would
18 result in a recommendation of dismissal. (*Id.*)

19
20 More than a week has now passed since Plaintiffs’ deadline for responding to the Court’s
21 May 14, 2021 Order to Show Cause and Plaintiffs have not responded, filed a Fourth Amended
22 Complaint, or otherwise communicated with the Court about their case. Accordingly, the case
23 is now subject to dismissal pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and
24 Local Rule 41-1.

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1 in this matter is an unreasonable delay. In the absence of any explanation, non-frivolous or
2 otherwise, for Plaintiffs' delay, the Court presumes prejudice. *See Laurino v. Syringa Gen.*
3 *Hosp.*, 279 F.3d 750, 753 (9th Cir. 2002) (presumption of prejudice can be rebutted by a non-
4 frivolous explanation); *Pagtalunan*, 291 F.3d at 642 (citing *Yourish v. California Amplifier*,
5 191 F.3d 983, 991 (9th Cir. 1999)).

6
7 The fourth factor—the availability of less drastic sanctions—ordinarily counsels against
8 dismissal. However, the Court has repeatedly gone above and beyond to avoid outright
9 dismissal. Most recently, it vacated the prior Report and Recommendation in the interests of
10 justice in order to give Plaintiffs one final opportunity to file a complaint that states a claim
11 for relief. Then, when no Fourth Amended Complaint was filed, the Court again attempted to
12 avoid dismissal by giving Plaintiff one final extension of time to comply with court orders and
13 warned Plaintiffs that their failure to timely respond would result in a recommendation of
14 dismissal. Plaintiffs did not respond or seize the opportunities to avoid dismissal advanced by
15 the Court. Thus, the Court explored the only meaningful alternatives to dismissal in its arsenal
16 and found that they were not effective. *See Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th
17 Cir. 1986) (“The district court need not exhaust every sanction short of dismissal before finally
18 dismissing a case, but must explore possible and meaningful alternatives.”) (citation omitted).
19 The Court therefore concludes that sanctions other than dismissal are no longer appropriate.

20
21 Only the fifth factor, the general policy favoring resolution of cases on the merits,
22 arguably favors retention of this action on the Court's docket. It is, however, the responsibility
23 of the moving party to move the case toward disposition on the merits at a reasonable pace and
24 to refrain from dilatory and evasive tactics. *Morris v. Morgan Stanley & Co.*, 942 F.2d 648,
25 652 (9th Cir. 1991). The Court cannot dispose of a case on its merits when the plaintiffs fail
26 to move the case forward, do not comply with court orders, and do not explain their silence or
27 delay. Plaintiffs have now allowed this matter to languish on the Court's docket for nearly 16
28 months without a viable initial pleading despite the Court's repeated instructions and warnings.

1 It therefore appears that the Court's retention of this action would not increase the likelihood
2 that the matter would be resolved on its merits.

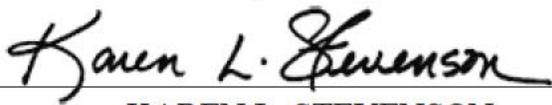
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4 **CONCLUSION AND ORDER**

5
6 For the foregoing reasons, IT IS ORDERED that this action is DISMISSED and
7 Judgment shall be entered separately dismissing this action without prejudice.

8
9 DATE: May 24, 2021

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11 
12 _____
13 OTIS D. WRIGHT, II
14 UNITED STATES DISTRICT JUDGE

15
16 Order Presented By:

17 
18 _____
19 KAREN L. STEVENSON
20 UNITED STATES MAGISTRATE JUDGE