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5 **UNITED STATES DISTRICT COURT**
67 EASTERN DISTRICT OF CALIFORNIA
89 BRUCE PATRICK HANEY, CASE NO. 1:10-cv-01506-LJO-SKO PC
10 v. Plaintiff, ORDER DENYING MOTION FOR
11 L. EPTSTEIN, et al., SUMMARY JUDGMENT AS MOOT AND
Defendants. DISMISSING ACTION, WITH PREJUDICE,
FOR FAILURE TO PROSECUTE
12 (Docs. 34 and 35)
13 /14 Plaintiff Bruce Patrick Haney is a former state prisoner proceeding pro se in this civil action
15 for violation of his rights under 42 U.S.C. § 1983. This action for damages is proceeding on
16 Plaintiff's First Amendment retaliation claim against Defendants Epstein and Gonzales.17 Defendants filed a motion for summary judgment on August 23, 2012, and on August 24,
18 2012, the Court issued an order requiring Plaintiff to file an opposition or a statement of non-
19 opposition to Defendants' motion within twenty-one days. Plaintiff's response was due or on before
20 September 17, 2012, and none has been filed.21 The Court has the inherent power to control its docket and may, in the exercise of that power,
22 impose sanctions where appropriate, including dismissal of the action. Bautista v. Los Angeles
23 County, 216 F.3d 837, 841 (9th Cir. 2000). In determining whether to dismiss an action for failure
24 to comply with a pretrial order, the Court must weigh "(1) the public's interest in expeditious
25 resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the
26 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability
27 of less drastic sanctions." In re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d
28 1217, 1226 (9th Cir. 2006) (internal quotations and citations omitted). These factors guide a court

1 in deciding what to do and are not conditions that must be met in order for a court to take action.

2 Id. (citation omitted).

3 Based on Plaintiff's failure to comply to with or otherwise respond to the Court's order, the
4 Court is left with no alternative but to dismiss the action for failure to prosecute. Id. This action,
5 which has been pending since 2010, requires Plaintiff's cooperation in its prosecution, the action
6 cannot simply remain idle on the Court's docket, and the Court is not in a position to expend its scant
7 resources resolving an unopposed motion in light of Plaintiff's demonstrated disinterest in
8 continuing the litigation. Id.

9 Accordingly, this action is HEREBY DISMISSED, with prejudice, for failure to prosecute
10 and Defendants' motion is DENIED as moot. In re PPA, 460 F.3d at 1226; Local Rule 110.

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12 IT IS SO ORDERED.

13 Dated: October 1, 2012

14 /s/ Lawrence J. O'Neill
15 UNITED STATES DISTRICT JUDGE
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