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3 **UNITED STATES DISTRICT COURT**
4 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

5 **JOHN SINGH, JR.,**

6 **Plaintiff,**

7 **v.**

8 **COLLECTIBLES MANAGEMENT**
9 **RESOURCES**

10 **Defendant.**

1:16-cv-00835 –LJO-BAM

**MEMORANDUM DECISION AND
ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS (Doc.13)**

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12 **I. INTRODUCTION AND BACKGROUND**

13 Pro se Plaintiff John Singh, Jr., brings this action against Defendant Collectibles Management
14 Resources alleging violations of the federal Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 *et*
15 *seq.*, and state law claims of loss of opportunity, defamation, and negligence.

16 On May 19, 2016, Plaintiff filed a complaint against Defendant in the Superior Court of
17 California for the County of Fresno. Doc. 1 at 1. On June 16, 2016, Defendant removed the case to this
18 Court, where jurisdiction is proper pursuant to 28 U.S.C. § 1441(a). *Id.* On July 28, 2016, this Court
19 granted Defendant’s motion to dismiss filed on June 23, 2016, dismissing with prejudice Plaintiff’s state
20 law claims of loss of opportunity, defamation, and negligence, and dismissing with leave to amend
21 Plaintiff’s FCRA claim. Doc. 6 at 4-5. On August 17, 2016, Plaintiff filed his first amended complaint.
22 Doc. 7. Defendant filed a second motion to dismiss on August 31, 2016. Doc. 8. Plaintiff did not file
23 an opposition, and Defendant filed a reply on September 23, 2016. Doc. 11.

24 On October 5, 2016, the Court issued a Memorandum Decision and Order dismissing Plaintiff’s
25 first amended complaint for failure to state a claim. Doc. 12. Plaintiff was directed to serve any

1 amended complaint on or before October 31, 2016, and instructed that failure to meet the deadline
2 would result in dismissal with prejudice. Doc. 12 at 9. On November 1, 2016, Defendant filed a request
3 for dismissal. Doc. 13. Plaintiff has not made any additional filing in this matter.

4 **II. DISCUSSION**

5 **A. Federal Rule of Civil Procedure 41(b) Standard**

6 Dismissal for failing to comply with a court order or failure to prosecute is appropriate under
7 Federal Rule of Civil Procedure (“Rule”) 41(b), as well as the inherent power of the Court to manage its
8 docket. *See Link v. Wabash R.R.*, 370 U.S. 626, 629-30 (1962). “Under Ninth Circuit precedent, when a
9 plaintiff fails to amend his complaint after the district judge dismisses the complaint with leave to
10 amend, the dismissal is typically considered a dismissal for failing to comply with a court order.”
11 *Yourish v. California Amplifier*, 191 F.3d 983, 986 (9th Cir. 1999).¹ Dismissal under Rule 41(b) is a
12 sanction to be imposed only in “extreme circumstances.” *Edwards v. Marin Park, Inc.*, 356 F.3d 1058,
13 1063 (9th Cir. 2004).

14 When determining whether a case is appropriate for dismissal for failure to comply with a court
15 order, the Court must consider five factors: “(1) the public’s interest in expeditious resolution of
16 litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the
17 public policy favoring disposition of cases on their merits; and (5) the availability of less drastic
18 alternatives.” *Yourish*, 191 F.3d at 990 (quoting *Hernandez v. City of El Monte*, 138 F.3d 393, 399
19 (9th Cir. 1998)). The court may dismiss an action “where at least four factors support dismissal, . . . or
20 where at least three factors ‘strongly’ support dismissal.” *Hernandez*, 138 F.3d at 399 (internal citation
21 omitted) (quoting *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992)). While the Court need not
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23 ¹ The Ninth Circuit’s holding in *Yourish* is limited to situations where the plaintiff, having been given an opportunity to
24 amend the complaint or have the case dismissed, takes no action. *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1065 (9th
25 Cir. 2004).

1 make explicit findings to show that it has considered the five factors, the Ninth Circuit has expressed its
2 preference for such findings. *Ferdik*, 963 F.2d at 1261. Therefore, the Court will consider each factor
3 in turn.

4 **B. The Public’s Interest in Expeditious Resolution of Litigation**

5 The first factor strongly favors dismissal of this action. Indeed, “the public’s interest in
6 expeditious resolution of litigation always favors dismissal.” *Yourish*, 191 F.3d at 990. On October 5,
7 2016, the Court permitted Plaintiff to serve an amended complaint by October 31, 2016. Plaintiff did
8 not meet that deadline, and has not replied to Defendant’s November 1, 2016, motion to dismiss.
9 Plaintiff’s failure to amend his complaint or prosecute his case has caused an undue delay in this action.
10 Plaintiff has provided no excuse or explanation for his inaction and has shown no intention to remedy
11 his inaction in the future. *See Moneymaker v. CoBen*, 31 F.3d 1447, 1452 (9th Cir. 1994) (last minute
12 motions to set trial dates and unexcused late filings after a motion to dismiss was filed did not excuse a
13 four year delay). Plaintiff has filed no papers whatsoever since his first amended complaint on August
14 17, 2016. Plaintiff’s actions are contrary to the public’s interest in expeditious resolution of litigation,
15 and this factor strongly favors dismissal.

16 **C. The Court’s Need to Manage Its Docket**

17 The second factor, the Court’s interest in managing its docket, also strongly favors dismissal.
18 The Eastern District of California has one of the highest weighted filings per judgeship in the Nation.
19 Administrative Office of the United States Courts, *Judicial Business of the United States Courts 2015*
20 Table X-1A (Sept. 30, 2015) available at [http://www.uscourts.gov/statistics/table/x-1a/judicial-](http://www.uscourts.gov/statistics/table/x-1a/judicial-business/2015/09/30)
21 [business/2015/09/30](http://www.uscourts.gov/statistics/table/x-1a/judicial-business/2015/09/30); *Responding to the Growing Need for Federal Judgeships: The Federal Judgeship*
22 *Act of 2009: Hearing Before the United States Committee on the Judiciary*, 111th Congr. (Sept. 22,
23 2009) (statement of the Hon. Lawrence J. O’Neill, United States District Court Judge). To address this
24 caseload in a timely manner, the Court must manage its docket efficiently and expeditiously. Plaintiff’s
25 failure to amend or withdraw his complaint, oppose Defendant’s motions, and to abide by the Court’s

1 orders has caused the litigation to grind to a halt and consumed scarce judicial resources. Consequently,
2 this factor strongly favors dismissal.

3 **D. The Risk of Prejudice to Defendant**

4 The third factor, the risk of prejudice to Defendant, also cuts in favor of dismissal. The mere
5 pendency of a lawsuit and limited delays are not so prejudicial to a defendant as to support dismissal
6 unless the prejudice “compounded by ‘unreasonable’ delays.” *Yourish*, 191 F.3d at 991 (citing *Ash v.*
7 *Cvetkov*, 739 F.2d 493, 496 (9th Cir. 1984)). The Court dismissed Plaintiff’s first amended complaint
8 with leave to amend over thirty days ago. While not an unusual length of time for a case to sit, an
9 explicit deadline was communicated to Plaintiff in this matter. Additionally, “[t]he risk of prejudice to a
10 defendant is related to the plaintiff’s reasons for defaulting in failing to timely amend.” *Yourish*, 191
11 F.3d at 991. Here, Plaintiff has offered no reason for the failure to amend. If he intended to abandon his
12 claim, Plaintiff should have notified the Court and Defendant. Instead, his silence forced Defendant to
13 make the instant motion and the Court to expend judicial resources. As Plaintiff continues to take no
14 action to prosecute his claim or comply with the Court’s orders, while Defendant continues to take
15 active part in this matter, allowing Plaintiff to continue this action is prejudicial to Defendant.

16 **E. The Public Policy Favoring Disposition of Cases on the Merits**

17 The fourth factor favors resolution of this matter on the merits and “strongly counsels against
18 dismissal.” *Hernandez*, 138 F.3d at 399. Plaintiff has not as of yet set forth a legally cognizable cause
19 of action in either his initial or amended complaint, but, to the extent that there is a viable cause of
20 action, public policy strongly favors resolution on the merits and this factor weighs against dismissal.

21 **F. The Availability of Less Drastic Sanctions**

22 The fifth factor also favors dismissal, as there are no available less drastic alternatives which
23 would plausibly address this situation. Plaintiff has failed to comply with an order of the Court, and this
24 case has remained inactive in for several months. Conceivably, the Court could grant Plaintiff, as a less
25 drastic alternative, additional time to replead. *See Yourish*, 191 F.3d at 991 (citing *Nevijel v. North*

