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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TERRYLYN MCCAIN,  <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> CALIFORNIA HIGHWAY PATROL, et al.,  <p style="text-align: center;">Defendants.</p>
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No. 2:11-cv-01265-KJM-AC

ORDER

On May 5, 2013, this court ordered plaintiff Terrylyn McCain (“plaintiff”) to show cause, ECF No. 163, why her claim should not be dismissed for (1) failure to prosecute and (2) failure to comply with the court’s previous order, ECF No. 59, which directed plaintiff to file a status report within fourteen days of her release from confinement. In response, plaintiff filed a “Case Management Report,” in which she cited problems with receiving mail and various detentions as preventing fulfillment of her duties to the court. ECF No. 166. After evaluating the relevant factors, the court finds that plaintiff, acting *pro se*, has shown good cause and that her claim may thus proceed.

Federal Rule of Civil Procedure 41(b) permits dismissal where “the plaintiff fails to prosecute or to comply with . . . a court order.” FED. R. CIV. P. 41(b). “District courts

1 have the inherent power to . . . ‘impose sanctions including, where appropriate, . . . dismissal of  
2 a case.’” *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992) (quoting *Thompson v. Hous.*  
3 *Auth.*, 782 F.2d 829, 831 (9th Cir. 1986)). However, “dismissal is a harsh penalty and . . .  
4 should be only be imposed in extreme circumstances.” *Id.* (quoting *Hamilton Copper & Steel*  
5 *Corp. v. Primary Steel, Inc.*, 898 F.2d 1428, 1429 (9th Cir. 1990)).

6           When weighing dismissal under Rule 41(b), the court must consider five factors:  
7 “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage  
8 its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition  
9 of cases on their merits; and (5) the availability of less drastic sanctions.” *Henderson v.*  
10 *Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986); *Ferdik*, 963 F.2d at 1260–61. Additionally,  
11 dismissal “must be supported by a showing of unreasonable delay,” which “creates a  
12 presumption of injury to the defense.” *Henderson*, 779 F.2d at 1423 (citations omitted).

13           Here, the first and second factors weigh in favor of dismissal, whereas the third,  
14 fourth and fifth weigh against. The first factor, as a matter of law, “always favors dismissal”  
15 because dismissal most expediently resolves the matter. *Pruett v. Astrue*, No. 2:11-cv-00195  
16 FCD KJN, 2011 WL 1327039, at \*3 (quoting *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th  
17 Cir. 1999)). Similarly, the second factor favors dismissal here both because failure to  
18 vigorously prosecute with all due haste impedes the court’s efficiency and failure to comply  
19 with court orders burdens both the court and opposing parties.

20           The remaining factors, however, do not counsel dismissal. Defendants have  
21 suffered minimal, if any, prejudice from the delayed filing of plaintiff’s status report. The court  
22 previously ordered plaintiff to file a report within fourteen days of release from confinement.  
23 Although failing to comply with that deadline, plaintiff filed her report on May 9, 2013—only  
24 eleven days later—and the court has not observed any prejudice defendants have suffered in the  
25 interim. Further, such a short lapse is insufficient to constitute a “showing of unreasonable  
26 delay” so as to “create[] a presumption of injury to the defense.” *Henderson*, 779 F.2d at 1423  
27 (citations omitted).

1           The fourth factor also weighs against dismissal. Weighing this factor requires a  
2 comparative analysis of the “policy favoring disposition on the merits” against “the  
3 responsibility of the moving party to move towards that disposition at a reasonable pace, . . .  
4 refrain[ing] from dilatory or evasive tactics.” *Morris v. Morgan Stanley & Co.*, 942 F.2d 648,  
5 652 (9th Cir. 1991). Here, the court does not find that plaintiff engaged in strategic  
6 maneuvering to prolong litigation. Rather, the court accepts as likely plaintiff’s proffered  
7 explanations—interference with receipt of mail and physical detention—for inadvertent  
8 noncompliance.

9           Finally, the fifth factor also weighs against dismissal. Review of the docket  
10 does not reveal other instances of failure to prosecute or noncompliance. In fact, until the  
11 instant order to show cause, this court has not previously warned plaintiff of the possibility of  
12 dismissal. As such, especially in light of plaintiff’s *pro se* status, the court finds a “less drastic  
13 sanction[]”—warning—to be available and proper. Accordingly, plaintiff is cautioned that  
14 further failure to prosecute or comply with court orders may result in sanctions up to and  
15 including dismissal.

16           Plaintiff’s claim may proceed.

17           IT IS SO ORDERED.

18 Dated: January 8, 2014.

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22 UNITED STATES DISTRICT JUDGE  
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