

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SEWA BHINDER,

 Plaintiff,

 v.

BANK OF AMERICA, N.A.,

 Defendant.

No. 2:13-cv-216-GEB-CKD

DISMISSAL ORDER¹

Defendant seeks an order dismissing this action with prejudice under Federal Rule of Civil Procedure ("Rule") 41(b) "for failure to prosecute and failure to comply with a court order." (Mot. to Dismiss 6:10, ECF No. 18.) Plaintiff failed to file an opposition or statement of non-opposition to Defendant's pending motion as required by Local Rule 230(c).

The dismissal order Defendant references was filed on August 5, 2013. That order granted Defendant's Rule 12(b)(6) dismissal motion and provided Plaintiff fourteen days with which to file an amended complaint, and warned Plaintiff "that failure to file an amended complaint within the prescribed time period could result in dismissal with prejudice under [Rule] 41(b)." (Order Granting Def.'s Mot. to Dismiss 4:24-5:2, ECF No. 16.) Defendant also notifies the undersigned judge in the motion that

¹ This matter is deemed suitable for decision without oral argument. E.D. Cal. R. 230(g), and therefore the hearing scheduled on March 24, 2014 is vacated.

1 "[o]n August 14, 2013, in light of pending settlement
2 discussions, Plaintiff and [Defendant] filed a joint motion to
3 extend the time for [P]laintiff to file an amended pleading."
4 (Mot. to Dismiss 3:16-17.) The parties failed to notice the
5 referenced joint motion for hearing or to otherwise bring it to
6 the attention of the undersigned judge. In the referenced joint
7 motion, the parties sought "to extend Plaintiff's time to file an
8 amended pleading in accordance with the Court's August 5, 2013
9 Order for forty-five (45) days," presumably until October 3,
10 2013. (J. Mot. to Extend Time 3:1-3, ECF No. 17.) Plaintiff has
11 not yet filed an amended complaint.

12 District courts may dismiss an action under Rule 41(b)
13 for failure to comply with a Local Rule or a court order. See,
14 e.g., Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) ("Failure
15 to follow a district court's local rules is a proper ground for
16 dismissal."); Ferdick v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir.
17 1992) (holding a district court may dismiss an action under Rule
18 41(b) "for failure to comply with any order of the court").
19 However, since "dismissal is a harsh penalty, it should be
20 imposed as a sanction only in extreme circumstances." Oliva v.
21 Sullivan, 958 F.2d 272, 273 (9th Cir. 1991).

22 When deciding whether to dismiss a case as a sanction
23 under Rule 41(b), "the district court must consider five factors:
24 (1) the public's interest in expeditious resolution of
25 litigation; (2) the court's need to manage its docket; (3) the
26 risk of prejudice to the defendants; (4) the public policy
27 favoring disposition of cases on their merits; and (5) the
28 availability of less drastic alternatives." Yourish v. Cal.

1 Amplifier, 191 F.3d 983, 990 (9th Cir. 1999) (quoting Hernandez
2 v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998)) (internal
3 quotation marks omitted).

4 The first and second factors weigh in favor of
5 dismissal in this case since Plaintiff's non-compliance with the
6 dismissal order has impaired the public's interest in expeditious
7 resolution of litigation and undermines the Court's ability to
8 manage its docket. See Yourish, 191 F.3d at 990 ("[T]he public's
9 interest in expeditious resolution of litigation always favors
10 dismissal"); Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th
11 Cir. 2002) ("It is incumbent upon the Court to manage its docket
12 without being subject to routine noncompliance of
13 litigants").

14 The third factor concerning the risk of prejudice to
15 Defendant considers the strength of a plaintiff's excuse for non-
16 compliance. See id. at 642-43 (stating that "the risk of
17 prejudice [is related] to the plaintiff's reason for
18 defaulting"). Since Plaintiff has provided no reason for its non-
19 compliance, the third factor also favors dismissal.

20 The fourth factor, concerning the public policy
21 favoring disposition of cases on their merits, weighs against
22 dismissal of Plaintiff's case. Id. at 643 ("Public policy favors
23 disposition of cases on the merits.").

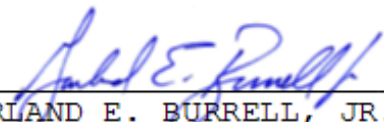
24 The fifth factor, concerning whether the Court has
25 considered less drastic sanctions, also weighs in favor of
26 dismissal since Plaintiff failed to amend its complaint within
27 the prescribed time period, despite the warning that the action
28 could be dismissed with prejudice as a result. See Ferdick, 963

1 F.2d at 1262 (“[A] district court’s warning to a party that his
2 failure to obey the court’s order will result in dismissal can
3 satisfy the ‘consideration of alternatives’ requirement.”).

4 The balance of the factors strongly favors dismissal of
5 this action with prejudice. Therefore, this action is dismissed
6 with prejudice. Judgment shall be entered in favor of Defendant.

7 Dated: March 18, 2014

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



GARIAND E. BURRELL, JR.
Senior United States District Judge