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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MELANIE ISABELLE CORNELL,
Appellant,
v.
U.S. BANK NATIONAL ASSOCIATION,
Respondent.

No. 2: 13-cv-0748 KJM

ORDER

On May 8, 2014, the court ordered appellant to show cause why this action should not be dismissed because of her failure to perfect the record on appeal. Appellant did not respond to the order.

Before a court can dismiss for failure to prosecute under Rule 41(b), it must consider the following factors: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to opposing parties; (4) the policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions. *In re Eisen*, 31 F.3d 1447, 1451 (9th Cir. 1994).

The court finds here that the *Eisen* factors overall support dismissal. First, the public has an interest in expeditious resolution of litigation. Here, appellant has done nothing to

1 perfect the record on appeal even though the bankruptcy court gave her notice of the deficiencies.
2 *See Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999) (“[T]he public’s interest in
3 expeditious resolution of litigation always favors dismissal.”).

4 Second, the court has an inherent interest in managing its docket. Appellant has
5 done nothing to move the appeal forward apart from filing the notice of appeal and has not even
6 acknowledged her obligation to act.

7 Third, the law presumes prejudice from unreasonable delay. *In re*
8 *Phenylpropanolamine (PPA) Products Liab. Litig.*, 460 F.3d 1217, 1227 (9th Cir. 2006) (citations
9 omitted). Although there is little suggesting actual prejudice to respondent, the presumption of
10 harm provides at least some support for dismissal. *See Morris v. Morgan Stanley & Co.*, 942 F.
11 2d 648, 651 (9th Cir. 1991) (stating the “failure to prosecute diligently is sufficient by itself to
12 justify dismissal, even in the absence of a showing of actual prejudice to the defendant from the
13 failure”) (quotation marks and citation omitted).

14 Fourth, although public policy strongly favors disposition of actions on their
15 merits, this consideration as in *Yourish* “is outweighed by the other four factors which support
16 dismissal of this action.” *Yourish*, 191 F.3d at 992; *cf. In re Eisen*, 31 F.3d at 1454 (“Even if the
17 plaintiff has an obviously strong case, dismissal would be appropriate if the plaintiff has clearly
18 ignored his responsibilities to the court in prosecuting the action and the defendant had suffered
19 prejudice as a result thereof.”) (quotation marks and citation omitted).

20 Fifth, in light of appellant’s failure to respond to the court’s order to show cause, it
21 does not appear lesser sanctions will be efficacious.

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IT IS THEREFORE ORDERED THAT:

1. The appeal is dismissed for failure to prosecute; and
2. The case is closed.

DATED: September 30, 2014.


UNITED STATES DISTRICT JUDGE