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4 UNITED STATES DISTRICT COURT  
5 EASTERN DISTRICT OF CALIFORNIA  
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7 In re Tammy Lynn Figuera,  
8 Debtor,  
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No. 2:14-cv-00863-GEB

BK Case No. 14-21730-A-7

10 Tammy Lynn Figuera,  
11 Appellant,  
12

**DISMISSAL ORDER**

13 v.  
14

15 Jesbir Brar,  
16 Appellee.

17 Appellant Tammy Lynn Figuera ("Appellant") filed a  
18 Notice of Bankruptcy Appeal on March 26, 2014. (Notice of  
19 Bankruptcy Appeal 7, ECF No. 1.) Appellee subsequently elected to  
20 have this Court decide the appeal; therefore, the appeal was  
21 transferred from the Ninth Circuit Bankruptcy Appellate Panel to  
22 this Court on April 7, 2014. (Id. at 1-4.)

23 On April 9, 2014, the Clerk's Office notified Appellant  
24 the "next step in prosecuting [her] appeal is compliance with  
25 F.R.B.P. 8006 and 8007[, which] require the appellant to file  
26 within 14 days a designation of record, statement of issues on  
27 appeal[,] and a notice regarding the ordering of transcripts with  
28

1 the bankruptcy court.” (Opening Letter, ECF No. 2 (emphasis  
2 omitted).)

3 Appellant filed a motion in this Court on April 23,  
4 2014, which was construed as a request to extend time under  
5 Federal Rules of Bankruptcy Procedure (“Rules”) 9001(b) to file a  
6 designation of record and statement of issues on appeal.  
7 (Appellant’s Mot., ECF No. 3.) That request was denied without  
8 prejudice on April 29, 2014, since it “should [have] be[en] filed  
9 in the bankruptcy court.” (Order 2:1-3, ECF No. 4.)

10 There was no further activity concerning the appeal in  
11 this Court. Further, a “Notice of Incomplete or Delayed Record to  
12 District Court Re: Bankruptcy Cases” was received from the  
13 bankruptcy court on July 23, 2014, which states Appellant has not  
14 filed in the bankruptcy court a designation of record, statement  
15 of issues, reporter’s transcript, or notice regarding the  
16 transcript. (ECF No. 5.) The July 23, 2014 Notice further states  
17 Appellant has not paid her filing fee. (Id.)

18 Therefore, Appellant was Ordered to Show Cause (“OSC”)   
19 in a writing to be filed in this Court no later than August 18,  
20 2014, why her bankruptcy appeal should not be dismissed under  
21 Federal Rule of Civil Procedure 41(b) for her failure to  
22 prosecute and/or comply with the Federal Rules of Civil and  
23 Bankruptcy Procedure. (OSC, ECF No. 6.)

24 Appellant has not responded to the OSC. Therefore, the  
25 Court considers whether this action should be dismissed under  
26 Rule 41(b) for failure to prosecute. Ash v. Cvetkov, 739 F.2d  
27 493, 496 (9th Cir. 1984) (“It is within the inherent power of the  
28 court to sua sponte dismiss a case for lack of prosecution.”).

1           In determining whether to dismiss a[n  
2       appeal] for failure to prosecute . . . , the  
3       Court must weigh the following factors: (1)  
4       the public's interest in expeditious  
5       resolution of litigation; (2) the court's  
6       need to manage its docket; (3) the risk of  
7       prejudice to [Appellee]; (4) the availability  
8       of less drastic alternatives; and (5) the  
9       public policy favoring disposition of cases  
10      on their merits.

11       Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002).

12           The first and second factors weigh in favor of  
13      dismissal here because Appellant's failure to prosecute her  
14      appeal has impaired the public's interest in expeditious  
15      resolution of litigation and undermines the Court's ability to  
16      manage its docket. See Yourish v. Cal. Amplifier, 191 F.3d 983,  
17      990 (9th Cir. 1999) ("The public's interest in expeditious  
18      resolution of litigation always favors dismissal."); Pagtalunan,  
19      291 F.3d at 642 ("It is incumbent upon the Court to manage its  
20      docket without being subject to routine noncompliance of  
21      litigants. . . .").

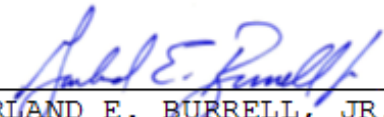
22           The third factor concerning the risk of prejudice to  
23      Appellee considers the strength of Appellant's excuse for non-  
24      compliance. See Pagtalunan, 291 F.3d at 642-43 (indicating "the  
25      risk of prejudice" is related to Appellant's reason for failing  
26      to prosecute). Since Appellant has provided no reason for her  
27      failure to prosecute her appeal, the third factor also favors  
28      dismissal.

29           The fourth factor concerning the public policy favoring  
30      disposition of cases on their merits, weighs against dismissal of  
31      the appeal. Id. at 643 ("Public policy favors disposition of  
32      cases on the merits.").

1           The fifth factor concerning whether the Court has  
2 considered less drastic sanctions, also weighs in favor of  
3 dismissal since Appellant failed to respond to the OSC despite  
4 the warning that her appeal could be dismissed as a result. See  
5 Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992) (stating  
6 "a district court's warning to a party that his failure to obey  
7 the court's order will result in dismissal can satisfy the  
8 'consideration of alternatives' requirement").

9           Since the balance of the factors strongly favors  
10 dismissal of this appeal, Appellant's appeal is dismissed. The  
11 Clerk of the Court shall close this action.

12 Dated: September 4, 2014

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