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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CYNTHIA HOPSON,

 Plaintiff,

 v.

WATERWAY CREATIONS, INC.;
CUSTOMERS FIRST ENTERPRISES,
INC.; and DOES 1-10,
inclusive,

 Defendants.*

No. 2:14-cv-01223-GEB-KJN

DISMISSAL ORDER

The January 22, 2015 Order to Show Cause and Continuing Status (Pretrial Scheduling) Conference required Plaintiff, no later than January 30, 2015, "to show cause why this action should not be dismissed under Federal Rule of Civil Procedure 41 for failure to prosecute." (OSC 2:9-17, ECF No. 11.) Plaintiff filed this action on May 19, 2014, and no Defendant has appeared. Further, despite the issuance of three Orders to Show Cause ("OSC") for the failure to timely file a status report, Plaintiff has not filed a status report in this action.

* The caption has been amended according to the voluntary dismissal of Defendants Joseph Mangelos and Mangelos Brothers, Inc. (See Pl.'s Notice of Dismissal, ECF No. 12.)

1 Plaintiff's counsel filed a response to the January 22,
2 2015 OSC, in which he declares, in relevant part:

3 Since none of the Defendants had made an
4 appearance in the lawsuit . . . , Plaintiff
5 did not want to file any entry of defaults as
6 Plaintiff wished to amend the complaint.
7 Plaintiff desired to file a motion to
8 supplement the complaint to add new
9 defendants, DON LEE, and, KEN HILDENBRAND,
10 and . . . slander and defamation causes of
11 action before filing [a] status report.
12 Plaintiff was attempting to gain evidence
13 before making a motion for such an amendment.

9

10 I . . . ask that this court at least
11 give plaintiff one last final thirty days to
12 file an amended complaint and attempt to re-
13 serve the remaining defendants with the
14 amended complaint before dismissing the case
15 for failure to prosecute.

14 (Pl.'s Resp. to OSC ¶¶ 13, 16, ECF No. 13.)

15 Notwithstanding the referenced request, Plaintiff has
16 not filed a motion seeking leave to amend, and Plaintiff, for the
17 fourth time, failed to timely file a status report. Therefore,
18 the Court considers whether this action should be dismissed for
19 failure to prosecute. Ash v. Cvetkov, 739 F.2d 493, 496 (9th Cir.
20 1984) ("It is within the inherent power of the court to sua
21 sponte dismiss a case for lack of prosecution.").

22 When considering whether to dismiss a party for failure
23 to prosecute, a court must consider:

24 (1) the public's interest in expeditious
25 resolution of litigation; (2) the court's
26 need to manage its docket; (3) the risk of
27 prejudice to defendants/respondents; (4) the
28 availability of less drastic alternatives;
and (5) the public policy favoring
disposition of cases on their merits.

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

1 The first and second factors weigh in favor of
2 dismissal in this case since Plaintiff's failure to prosecute the
3 action has impaired the public's interest in expeditious
4 resolution of litigation and undermines the Court's ability to
5 manage its docket. See Yourish v. Cal. Amplifier, 191 F.3d 983,
6 990 (9th Cir. 1999) ("The public's interest in expeditious
7 resolution of litigation always favors dismissal."); Pagtalunan,
8 291 F.3d at 642 ("It is incumbent upon the Court to manage its
9 docket without being subject to routine noncompliance of
10 litigants").

11 The third factor concerning the risk of prejudice to
12 Defendants considers the strength of a party's excuse for non-
13 compliance. See Pagtalunan, 291 F.3d at 642-43 (indicating "the
14 risk of prejudice" is related to Plaintiffs' reason for failing
15 to prosecute). Since Plaintiff has provided no reason for her
16 continued failure to prosecute the action, the third factor also
17 favors dismissal.

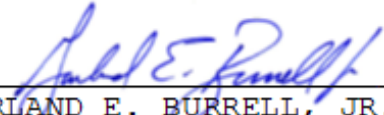
18 The fourth factor concerning whether the Court has
19 considered less drastic sanctions, also weighs in favor of
20 dismissal since Plaintiff failed to prosecute this action despite
21 the warning that the action could be dismissed as a result. See
22 Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992) ("[A]
23 district court's warning to a party that his failure to obey the
24 court's order will result in dismissal can satisfy the
25 'consideration of alternatives' requirement."). Further, the
26 dismissal is without prejudice. See Ash, 739 F.3d at 496-97 (9th
27 Cir. 1984) (indicating dismissal without prejudice "is a more
28 easily justified sanction for failure to prosecute").

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The fifth factor concerning the public policy favoring disposition of cases on their merits, weighs against dismissal. Pagtalunan, 291 F.3d at 643 ("Public policy favors disposition of cases on the merits.").

Since the balance of the factors strongly favors dismissal, this action is dismissed without prejudice. The Clerk of the Court shall close this action.

Dated: March 4, 2015



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