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28UNITED STATES DISTRICT COURT
Northern District of California

LORRAINE FERGUSON,

Plaintiff,

v.

HORIZON LINES, INC., et al.,

Defendants.

No. CV11-3391 MEJ

ORDER DISMISSING CASE

On November 14, 2012, the Court granted Defendant Horizon Lines, Inc.'s Motion for Summary Judgment against Plaintiff Lorraine Ferguson. Dkt. No. 41. As Andrew A. Tretyak is the sole remaining Defendant and there is no indication that he has been served with the Complaint, the Court ordered Plaintiff to show cause why her case against Tretyak should not be dismissed for failure to prosecute. Dkt. 42. The Court ordered Plaintiff to file a declaration by November 28, 2012, or, in the alternative, file a voluntary dismissal by November 28. Plaintiff has failed to file either. Based on this procedural history, the Court finds it appropriate to dismiss this case pursuant to Federal Rule of Civil Procedure 41(b).

Under Rule 41(b), failure to comply with a court order can warrant dismissal. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992). In “determining whether to dismiss a case for failure to comply with a court order, the district court must weigh five factors including ‘(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 the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives.’” *Ferdik*, 963 F.2d at 1260-61 (quoting *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th Cir. 1986)). Here, Plaintiff has failed to serve Defendant Tretyak, failed to comply with Court orders and deadlines, failed to respond to the order to show

1 cause, and has made no appearance in this matter since the Court granted summary judgment in
2 favor Horizon Lines, LLC. Thus, the Court finds that the *Ferdik* factors weigh in favor of dismissal
3 and the Court hereby DISMISSES Plaintiff's complaint.

4 **IT IS SO ORDERED.**

5 Dated: December 3, 2012

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8 Maria-Elena James
9 Chief United States Magistrate Judge