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2 UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4 OAKLAND DIVISION
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6 ALLIANT CREDIT UNION,

7 Plaintiff,

8 vs.

9 THE VESSEL "EAGLE REST," her rigging,
10 her engines, boilers, tackle, etc., and all other
11 necessities thereunto appertaining and
12 belonging in Rem; STEVEN E. THOMAS
13 aka STEVEN THOMAS, in Personam,

14 Defendants.

Case No: 09-1616 SBA

ORDER DISMISSING ACTION

15 On September 2, 2010, the Court denied Plaintiff's application for default judgment.
16 See Order Denying Pl.'s App. for Default Judgment, Dkt. 28. The Court's order further
17 stated:

18 Alliant is granted leave to amend its Complaint. Within ten
19 days of the date this Order is filed, Alliant shall either file an
20 amended complaint or request for voluntary dismissal under
21 Rule 41(a)(1)(A). Failure to timely comply with this Order may
22 result in the dismissal of the action, with prejudice, pursuant to
23 Rule 41(b).

24 Id. at 7 (emphasis added). Although more than ten days have elapsed since the filing of the
25 aforementioned order, Plaintiff has neither filed an amended complaint nor a request for
26 voluntary dismissal.

27 Under Federal Rule of Civil Procedure 41(b), the Court may dismiss an action for
28 failure to prosecute. Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992). In
exercising its discretion under this rule, the Court is guided by five factors: (1) the public's
interest in expeditious resolution of litigation; (2) the court's needs to manage its docket;

1 (3) the risk of prejudice to defendants; (4) the public policy favoring disposition of cases on
2 their merits; and (5) the availability of less drastic alternatives. Moneymaker v. CoBen (In
3 re Eisen), 31 F.3d 1447, 1451 (9th Cir. 1994) (citing Henderson v. Duncan, 779 F.2d 1421,
4 1423 (9th Cir. 1986)).

5 Here, the first and second factors both favor dismissal. In order to ensure progress
6 in the litigation, the Court expressly ordered Plaintiff to file an amended complaint to cure
7 the deficiencies articulated in the Court's ruling or to voluntarily dismiss the action.
8 Plaintiff has disregarded the Court's order and done neither. Such non-compliance
9 inherently delays resolution of the case and works to the detriment of the public. See
10 Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002) ('It is incumbent upon the Court to
11 manage its docket without being subject to routine noncompliance of litigants'); Yourish v.
12 California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999) (recognizing court's need to control
13 its own docket); see also Ferdik, 963 F.2d 1258, 1261 (9th Cir. 1992) (non-compliance with
14 a court's order diverts "valuable time that [the court] could have devoted to other major and
15 serious criminal and civil cases on its docket?').

16 The third factor, the risk of prejudice to the Defendants, is related to the strength of
17 the Plaintiff's excuse for the default. See Yourish, 191 F.3d at 991. Here, Plaintiff has
18 offered no excuse for its conduct nor is any apparent from the record. These facts also
19 weigh strongly in favor of dismissal. See Yourish, 191 F.3d at 991; Ghazali, 46 F.3d. at 54.

20 The fourth factor favoring disposition of cases on the merits, by definition, weighs
21 against dismissal. Pagtalunan, 291 F.3d at 643 ('Public policy favors disposition of cases on
22 the merits. Thus, this factor weighs against dismissal?')

23 Finally, the Court has considered less drastic alternatives to dismissal. The Court's
24 prior order warned Plaintiff that the failure to file an amended complaint or a notice of
25 voluntary dismissal would result in the dismissal of the action. "[A] district court's warning
26 to a party that failure to obey the court's order will result in dismissal can satisfy the
27 'consideration of [less drastic sanctions] requirement.'" Ferdik, 963 F.2d at 1262.

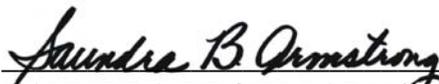
28 Accordingly,

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IT IS HEREBY ORDERED THAT the instant action is DISMISSED. The Clerk shall close the file and terminate any pending matters.

IT IS SO ORDERED.

Dated: September 17, 2010



SAUNDRA BROWN ARMSTRONG
United States District Judge