

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 OAKLAND DIVISION
4

5 KEITH SHATEK,

6 Plaintiff,

7 vs.

8 KING TSUI,

9 Defendant.

Case No: C 10-5896 SBA

ORDER OF DISMISSAL

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11 On July 12, 2011, the Court issued an Order to Show Cause why the instant action
12 should not be dismissed under Federal Rule of Civil Procedure 41(b) for failing to comply
13 with the Court's scheduling order. Dkt. 19. Plaintiff has not responded to the Order to
14 Show Cause and the time for doing so has long since passed.

15 A court must weigh five factors in determining whether to dismiss a case for failure
16 to prosecute, failure to comply with a court order, or failure to comply with a district
17 court's local rules. Ferdik v. Bonzelet 963 F.2d 1258, 1260 (9th Cir. 1992). Specifically,
18 the court must consider: (1) the public's interest in expeditious resolution of litigation; (2)
19 the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the
20 availability of less drastic alternatives; and (5) the public policy favoring disposition of
21 cases on their merits. Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002). "These
22 factors are not a series of conditions precedent before the judge can do anything, but a way
23 for a district judge to think about what to do." In re Phenylpropanolamine (PPA) Prods.
24 Liab. Litig., 460 F.3d 1217, 1226 (9th Cir. 2006).

25 In the instant case, the Court finds that the above-referenced factors weigh in favor
26 of dismissal. With regard to the first factor, "[t]he public's interest in expeditious
27 resolution of litigation always favors dismissal." Yourish v. Cal. Amplifier, 191 F.3d 983,
28 990 (9th Cir. 1999). This is particularly true in the instant case, where Plaintiff's failure to

1 file a case management statement and failure to set up the call for and appear at the case
2 management conference has impeded this Court’s ability to schedule this case for trial and
3 move the litigation forward.

4 The second factor also militates in favor of dismissal. See Pagtalunan, 291 F.3d at
5 642 (“It is incumbent upon the Court to manage its docket without being subject to routine
6 noncompliance of litigants”); Yourish, 191 F.3d 983, 990 (9th Cir. 1999) (recognizing
7 court’s need to control its own docket); see also Ferdik, 963 F.2d at 1261 (non-compliance
8 with a court’s order diverts “valuable time that [the court] could have devoted to other
9 major and serious criminal and civil cases on its docket.”).

10 The third factor, the risk of prejudice to the defendants, generally requires that “a
11 defendant ... establish that plaintiff’s actions impaired defendant’s ability to proceed to trial
12 or threatened to interfere with the rightful decision of the case.” Pagtalunan, 291 F.3d at
13 642. At the same time, the Ninth Circuit has “related the risk of prejudice to the plaintiff’s
14 reason for defaulting.” Id. Here, Plaintiff has offered no explanation for his failure to
15 respond nor is any apparent from the record. These facts also weigh strongly in favor of
16 dismissal. See Yourish, 191 F.3d at 991; Ghazali, 46 F.3d. at 54.

17 As to the fourth factor, the Court has already considered less drastic alternatives to
18 dismissal by warning Plaintiff that the failure to respond to the Order to Show Cause would
19 result in the dismissal of the action. “[A] district court’s warning to a party that failure to
20 obey the court’s order will result in dismissal can satisfy the ‘consideration of [less drastic
21 sanctions]’ requirement.” Ferdik, 963 F.2d at 1262.

22 The final factor, which favors disposition of cases on the merits, by definition,
23 weighs against dismissal. Pagtalunan, 291 F.3d at 643 (“Public policy favors disposition of
24 cases on the merits. Thus, this factor weighs against dismissal.”).

25 In sum, the Court concludes that four of the five relevant factors weigh strongly in
26 favor of dismissal. Id. (affirming dismissal with prejudice where three factors favored
27 dismissal, while two factors weighed against dismissal). Accordingly,
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IT IS HEREBY ORDERED THAT the instant action is DISMISSED with prejudice, pursuant to Federal Rule of Civil Procedure 41(b). The Clerk shall close the file and terminate all pending matters and deadlines.

IT IS SO ORDERED.

Dated: October 7, 2011


SAUNDRA BROWN ARMSTRONG
United States District Judge

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4 SCHATEK et al,
5
6 Plaintiff,

7 v.

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9
10 Defendant.

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CERTIFICATE OF SERVICE

11
12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on October 12, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
16 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
17 located in the Clerk's office.

18 Keith Schatek
19 # 7 N. Front Street
20 Rio Vista, CA 94571

21 King Tsui
22 473 Buena Vista Avenue, Suite #203
23 Alameda, CA 94501

24 Dated: October 12, 2011

Richard W. Wieking, Clerk

By: LISA R CLARK, Deputy Clerk