

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

LEE ANN ALICIA MERCHANT,
Plaintiff,
vs.
MICHAEL J. ASTRUE,
Commissioner of Social Security,
Defendant.

Case No: C 12-1644 SBA

ORDER DISMISSING ACTION

On September 12, 2013, the Court issued an Order to Show Cause re Dismissal (“OSC”) directing Plaintiff to explain why the action should not be dismissed based on her failure to file and serve a motion for summary judgment in accordance with the Court’s Procedural Order for Social Security Review Actions. Dkt. 19. Plaintiff was given until September 20, 2013, to respond to the OSC, and was warned that the failure to timely respond would constitute grounds for dismissing the action. To date, the Court has received no response from Plaintiff.

“Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss an action for failure to comply with any order of the court.” Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992); Link v. Wabash R. Co., 370 U.S. 626, 630 (1962) (“[t]he authority of the federal trial court to dismiss a plaintiff’s action with prejudice because of his failure to prosecute cannot seriously be doubted.”). “In determining whether to dismiss a claim for failure to prosecute or failure to comply with a court order, the Court must weigh the following factors: (1) the public’s interest in expeditious resolution

1 of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to
2 defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public
3 policy favoring disposition of cases on their merits.” Pagtalunan v. Galaza, 291 F.3d 639,
4 642 (9th Cir. 2002).

5 In the instant case, the Court finds that the above-referenced factors weigh in favor
6 of dismissal. With regard to the first factor, “[t]he public’s interest in expeditious
7 resolution of litigation always favors dismissal.” Yourish v. Cal. Amplifier, 191 F.3d 983,
8 990 (9th Cir. 1999). This is particular true here, where Plaintiff’s failure to file her motion
9 for summary judgment has impeded the Court’s ability to resolve the action.

10 The second factor, the Court’s need to manage its docket, also militates in favor of
11 dismissal. See Pagtalunan, 291 F.3d at 642 (“It is incumbent upon the Court to manage its
12 docket without being subject to routine noncompliance of litigants”); Yourish, 191 F.3d
13 983, 990 (9th Cir. 1999) (recognizing court’s need to control its own docket); see also
14 Ferdik, 963 F.2d at 1261 (non-compliance with a court’s order diverts “valuable time that
15 [the court] could have devoted to other major and serious criminal and civil cases on its
16 docket.”).

17 The third factor, the risk of prejudice to the defendant, generally requires that “a
18 defendant ... establish that plaintiff’s actions impaired defendant’s ability to proceed to trial
19 or threatened to interfere with the rightful decision of the case.” Pagtalunan, 291 F.3d at
20 642. At the same time, the Ninth Circuit has “related the risk of prejudice to the plaintiff’s
21 reason for defaulting.” Id. Here, Plaintiff has offered no explanation for her failure to
22 respond to the OSC or file her summary judgment motion, nor is any apparent from the
23 record. These facts also weigh strongly in favor of dismissal. See Yourish, 191 F.3d at
24 991; Ghazali v. Moran, 46 F.3d 52, 54 (9th Cir. 1995). (per curiam).

25 As to the fourth factor, the Court has already considered less drastic alternatives to
26 dismissal. In its OSC, the Court warned Plaintiff that the failure to respond to the OSC
27 would result in the dismissal of the action. “[A] district court’s warning to a party that
28

1 failure to obey the court's order will result in dismissal can satisfy the 'consideration of
2 [less drastic sanctions]' requirement." Ferdik, 963 F.2d at 1262.

3 The final factor, which favors disposition of cases on the merits, by definition,
4 weighs against dismissal. Pagtalunan, 291 F.3d at 643 ("Public policy favors disposition of
5 cases on the merits. Thus, this factor weighs against dismissal.").

6 In sum, the Court concludes that four of the five relevant factors weigh strongly in
7 favor of granting dismissing the action. Id. (affirming dismissal where three factors
8 favored dismissal, while two factors weighed against dismissal). Accordingly,

9 IT IS HEREBY ORDERED THAT the instant action is DISMISSED without
10 prejudice, pursuant to Rule 41(b). The Clerk shall close the file and terminate any pending
11 Docket matters.

12 IT IS SO ORDERED.

13 Dated: September 25, 2013


SAUNDRA BROWN ARMSTRONG
United States District Judge

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28