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

ALAN COOKE, GAGE T. COOKE,

Plaintiffs,

vs.

TERRY LILES, an individual, MURL
HARPMAN, an individual, MARVIN
KIRKPATRICK, an individual, MICHAEL
MEDLIN, an individual, CITY OF EUREKA
POLICE DEPARTMENT; COUNTY OF
HUMBOLDT; PAUL GALLEGOS, an
individual; HUMBOLDT COUNTY
SHERIFF'S OFFICE; various DOE
defendants, inclusive,

Defendants.

Case No: C 12-1844 SBA

ORDER DISMISSING ACTION

The instant pro se action arises from the death of Zachary Cooke (“Decedent”), who was shot and killed on January 4, 2007 by Eureka Police Department Officer Terry Liles. On March 25, 2013, the Court, pursuant to 28 U.S.C. § 1915(e)(2), prescreened the Complaint filed by the Decedent’s father, Alan Cooke, and the Decedent’s brother, Gage T. Cooke. The Court dismissed the claims alleged in the Complaint with leave to amend, and denied Plaintiffs’ motion for recusal. Dkt. 30. The Court instructed Plaintiffs to file their Amended Complaint by no later than April 24, 2013, and expressly warned that the “[f]ailure to file an amended complaint within the specified time-frame will result in the

1 dismissal of the action, without prejudice, pursuant to Federal Rule of Civil Procedure
2 41(b).” Id. at 14.

3 Plaintiffs did not file an Amended Complaint, as instructed. Instead, on April 15,
4 2013, Plaintiff Alan Cooke individually filed a Notice of Appeal from the Court’s Order
5 dismissing the Complaint. Dkt. 31. The Ninth Circuit subsequently dismissed the appeal
6 for lack of jurisdiction.

7 On April 26, 2013, the Court issued an Order in which it noted that the deadline for
8 Plaintiffs to file their Amended Complaint had lapsed and that the Court was within its
9 discretion to dismiss the action. However, in consideration of less drastic alternatives to
10 dismissal, the Court sua sponte granted Plaintiffs additional time to file their Amended
11 Complaint, as follows:

12 Plaintiffs shall have until May 10, 2013 to file their Amended
13 Complaint. Plaintiffs are warned that the failure to file an
14 Amended Complaint within the specified time-frame will result
in the dismissal of the action with prejudice, without further
notice, pursuant to Federal Rule of Civil Procedure 41(b).

15 Id. at 3-4 (emphasis added). To date, Plaintiffs have not filed an Amended Complaint or
16 otherwise communicated with the Court.

17 “Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss an
18 action for failure to comply with any order of the court.” Ferdik v. Bonzelet 963 F.2d
19 1258, 1260 (9th Cir. 1992); Link v. Wabash R. Co., 370 U.S. 626, 630 (1962) (“[t]he
20 authority of the federal trial court to dismiss a plaintiff’s action with prejudice because of
21 his failure to prosecute cannot seriously be doubted.”). “In determining whether to dismiss
22 a claim for failure to prosecute or failure to comply with a court order, the Court must
23 weigh the following factors: (1) the public’s interest in expeditious resolution
24 of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to
25 defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public
26 policy favoring disposition of cases on their merits.” Pagtalunan v. Galaza, 291 F.3d 639,
27 642 (9th Cir. 2002).

1 In the instant case, the Court finds that the above-referenced factors weigh in favor
2 of dismissal. With regard to the first factor, “[t]he public’s interest in expeditious
3 resolution of litigation always favors dismissal.” Yourish v. Cal. Amplifier, 191 F.3d 983,
4 990 (9th Cir. 1999). This is particularly true here, where Plaintiffs have repeatedly failed to
5 comply with the Court’s deadlines to file an Amended Complaint, which, in turn, has
6 interfered with the Court’s ability to enter a pretrial schedule and set a trial date.

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

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

22 As to the fourth factor, the Court has already considered less drastic alternatives to
23 dismissal. In its March 25 Order dismissing Plaintiffs’ claims, the Court warned Plaintiffs
24 that the failure to timely amend would be deemed grounds for dismissal under Rule 41(b).
25 When Plaintiffs failed to timely amend, rather than dismissing the action, the Court sua
26 sponte granted Plaintiffs an extension of time to amend—and again warned that the failure
27 to do so would result in the dismissal of the action, *with* prejudice. “[A] district court’s
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1 warning to a party that failure to obey the court's order will result in dismissal can satisfy
2 the 'consideration of [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 with prejudice
10 for failure to prosecute, pursuant to Rule 41(b).

11 IT IS SO ORDERED.

12 Dated: July 12, 2013


SAUNDRA BROWN ARMSTRONG
United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ALAN A. COOKE et al,

Plaintiff,

v.

TERRY LILES et al,

Defendant.

_____ /

Case Number: CV12-01844 SBA

CERTIFICATE OF SERVICE

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

That on July 12, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Alan A. Cooke
1513 Antone
Arcata, CA 95521

Gage T. Cooke
1114 Curtis St.
Burlington, WA 98233

Dated: July 12, 2013

Richard W. Wieking, Clerk

By: Lisa Clark, Deputy Clerk