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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 ANDY GONZALEZ,

11 Plaintiff,

12 v.

13 CECLIA BENABIDEZ, an individual;
14 and STATE OF ARIZONA, a public
15 entity,

Defendants.

Civil No. 13cv0779 JAH(JMA)

ORDER GRANTING DEFENDANT
STATE OF ARIZONA'S
UNOPPOSED MOTION TO
DISMISS [DOC. # 5] AND
VACATING HEARING DATE

16 INTRODUCTION

17 Pending before this Court is defendant State of Arizona's motion to dismiss the
18 complaint for failure to state a claim upon which relief may be granted pursuant to Rules
19 12(b)(1), (2) and (6) of the Federal Rules of Civil Procedure. Doc. # 5. Plaintiff did not
20 file an opposition to the motion. After a careful review of the pleadings filed by
21 defendant, along with the entire record of this matter, this Court **GRANTS** defendant's
22 unopposed motion to dismiss and vacates the hearing date of August 5, 2013.

23 BACKGROUND

24 Plaintiff filed the instant complaint on April 1, 2013. Defendant filed its motion
25 to dismiss on June 19, 2013. As of the date of this order, no opposition or other response
26 has been filed by plaintiff.

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DISCUSSION

The Ninth Circuit has held that a district court may properly grant a motion to dismiss as unopposed pursuant to a local rule where the local rule permits, but does not require the granting of a motion for failure to respond. *See generally, Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (*per curiam*) (affirming dismissal for failure to timely file opposition papers). Civil Local Rule 7.1(f.3.c) expressly provides that “[i]f an opposing party fails to file the papers in the manner required by Local Rule 7.1(e.2), that failure may constitute a consent to the granting of that motion or other request for ruling by the court.” Because defendant’s motion to dismiss is set for hearing on August 5, 2013, Local Rule 7.1(e.2) required plaintiff to file an opposition no later than July 22, 2013. To date, plaintiff has neither responded to the motion nor sought additional time to do so.

Prior to granting an unopposed motion for dismissal, the Court must weigh the following factors: “(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 sanctions.” *Ghazali*, 46 F.3d at 53 (quoting *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)). The Ninth Circuit has recognized that the first and fourth factors cut in opposite directions. *See Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999) (first factor always weighs in favor of dismissal); *Hernandez v. City of El Monte*, 138 F.3d 393, 401 (9th Cir. 1998) (fourth factor counsels against dismissal).

After a review of the record, this Court finds that the second factor weighs in favor of dismissal. As the court noted in *Yourish*, the routine noncompliance of litigants should not prevent the court from managing its docket. *Yourish*, 191 F. 3d 990. Plaintiff has failed to comply with one of the most basic requirements of litigation and to date has offered no excuse for failing to respond to defendant’s motion to dismiss. The fact that Plaintiff has yet to make any attempt to address the motion to dismiss also supports a finding of prejudice towards Defendants, and weighs in favor of dismissal.

Finally, with respect to whether less drastic measures have been considered, in the


1 interest of lessening the sanction imposed on Plaintiff, the Court will grant Defendants'
2 motion to dismiss without prejudice. Thus, this Court finds the factors weigh heavily in
3 favor of granting defendant's motion to dismiss.

4 **CONCLUSION AND ORDER**

5 Based on the foregoing, IT IS HEREBY ORDERED that:

- 6 1. Defendant's unopposed motion to dismiss [doc. # 5] is **GRANTED**;
7 2. The hearing date of August 5, 2013 is **VACATED**; and
8 3. The claims presented against defendant State of Arizona in the instant
9 complaint are **DISMISSED without prejudice**.

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11 Dated: July 30, 2013

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14 JOHN A. HOUSTON
15 United States District Judge
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