

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 SOFIA T. GUILAS,)
4)
5 Plaintiff,) Case No.: 2:09-cv-01241-GMN-RJJ
6 vs.)
7 TOM BRAUER, et al.,) **ORDER**
8 Defendants.)
9)

10 Pending before the Court is a Motion for Final Judgment (ECF No. 54) and a
11 Motion for Judgment (ECF No. 61). Both motions were filed by Plaintiff Sofia Guilas
12 (“Plaintiff”). For the reasons that follow, this case is DISMISSED with prejudice, and
13 Plaintiff’s motions are DENIED as moot.

14 **I. BACKGROUND**

15 Plaintiff’s initial Complaint and Motion for Leave to Proceed *In Forma Pauperis*
16 was filed with this Court on July 9, 2009. (ECF No. 1.) On October 27, 2009, Magistrate
17 Judge Robert J. Johnston held a hearing at which time he denied the Motion to Proceed *In*
18 *Forma Pauperis* and the Complaint without prejudice. (ECF No. 23.) Magistrate Judge
19 Johnston gave Plaintiff until November 30, 2009 to re-file amended versions of both
20 documents. (*Id.*)

21 Plaintiff filed a new Motion for Leave to Proceed *In Forma Pauperis* on October
22 30, 2009, (ECF No. 17), but did not file an Amended Complaint. On December 17, 2009,
23 Magistrate Judge Johnston ordered Plaintiff to file an Amended Complaint by January
24 15, 2010, (ECF No. 35), but Plaintiff failed to do so. At a hearing on May 10, 2010,
25 Magistrate Johnston announced that he planned on recommending that this case be

1 dismissed due to Plaintiff's failure to file an Amended Complaint. (ECF No. 52.) To this
2 day, Plaintiff has not filed an Amended Complaint, nor have any of the named
3 Defendants been served with summons of any sort. Plaintiff has, however, filed a great
4 number of frivolous motions, including: a "Motion to Quash Any Dismissal or
5 Obstruction of Justice or Any Attempt to Refute My Points and Authorities," (ECF No.
6 40); a "Motion for Automatic Winning of My Case," (ECF No. 30); and a "Motion to
7 Retain Every Detail of My Documentations Except For the Remedy Request for My
8 Supposed Salary from June 29, 2008 at Iram," (ECF No. 21).

9 II. DISCUSSION

10 Federal trial courts have the power to dismiss a plaintiff's action with prejudice
11 because of the plaintiff's failure to prosecute. *Link v. Wabash R. Co.*, 370 U.S. 626, 629-
12 32 (1962) (affirming dismissal for failure to prosecute based on attorney's unexcused
13 failure to attend pretrial conference and other delays); *see also* Fed. R. Civ. P. 41(b).
14 "The power to invoke this sanction is necessary in order to prevent undue delays in the
15 disposition of pending cases and to avoid congestion in the calendars of the District
16 Courts." *Link*, 370 U.S. at 630-31. Although dismissal is a harsh penalty, it is appropriate
17 when a plaintiff fails to prosecute with "reasonable diligence," even in the absence of a
18 showing of actual prejudice to the defendants due to the failure. *Anderson v. Air West,*
19 *Inc.*, 542 F.2d 522, 524 (9th Cir. 1976).

20 This case has remained on the Court's docket even though there has not been a
21 governing Complaint for over one year, since October 27th of last year. Magistrate Judge
22 Johnston has given Plaintiff ample opportunity to file an Amended Complaint, but, yet,
23 Plaintiff has failed to do so and has failed to provide any reasonable explanation for this
24 failure. Essentially, all Plaintiff has done is file frivolous motion after motion, the
25 number of which is evident from the sixty-two (62) docket entries in this case despite the

1 fact that no defendants have ever been served. As such, it is apparent that Plaintiff has
2 failed to prosecute this case with reasonable diligence.

3 Nonetheless, a court must weigh five factors before dismissing a case for failure to
4 prosecute: (1) the public's interest in expeditious resolution of litigation; (2) the court's
5 need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
6 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
7 sanctions. *Ash v. Cvetkov*, 739 F.2d 493, 496 (9th Cir. 1984). The public's interest in
8 expeditious resolution of litigation always favors dismissal, *Yourish v. California*
9 *Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999), while public policy normally favors
10 disposition of cases on the merits, *Pangtalunan v. Galaza*, 291 F.3d 639, 643 (9th 2002).

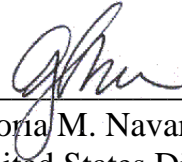
11 The Court's need to manage its docket certainly weighs in favor of dismissal here,
12 as this Court and Magistrate Judge Johnston have been forced to devote substantial
13 amounts of time to this case, even though there is currently no controlling Complaint on
14 file. By dismissing the case, the Court will be able to devote its time to other litigants in
15 other cases who abide by the Court's directions and meet their deadlines. Further, the
16 risk of prejudice to the defendants grows as each day passes without an Amended
17 Complaint being filed and without the defendants receiving notice of the pendency of this
18 lawsuit. As more time elapses from the date of the alleged events underlying this case,
19 the more difficult it will be for Defendants to conduct useful discovery with regard to
20 them.

21 Finally, dismissal with prejudice is appropriate because less drastic measures--
22 such as warnings and the implementation of strict deadlines--have been attempted, but to
23 no avail. Because four of the five factors weigh in favor of dismissal, and because
24 Plaintiff has failed to prosecute the case with reasonable diligence, this case will be
25 dismissed.

1 **CONCLUSION**

2 IT IS HEREBY ORDERED that this lawsuit is **DISMISSED with prejudice**. All
3 pending motions are DENIED as moot.

4 DATED this 16th day of December, 2010.

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8 Gloria M. Navarro
9 United States District Judge
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