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Case No. 2:23-cv-01996-JAD-BNW

ORDER ADOPTING REPORT AND RECOMMENDATION

V.

ECF No. 11

Defendants.

The law permits a district court to dismiss an action based on a party's failure to prosecute his case or comply with a court order. *See Hells Canyon Preservation Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) (recognizing that courts may dismiss an action pursuant to Federal Rule of Civil Procedure 41(b) sua sponte for a plaintiff's failure to prosecute or comply with the rules of civil procedure or the court's orders); *see also Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint). In determining whether to dismiss an action, the court must consider: (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

1 merits; and (5) the availability of less drastic alternatives. *In re Phenylpropanolamine Prod. Liab.*
2 *Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128,
3 130 (9th Cir. 1987)).

4 The first two factors, the public’s interest in expeditiously resolving this litigation and the
5 court’s interest in managing its docket, weigh in favor of dismissal of Plaintiff’s claims. The
6 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
7 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading
8 ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th
9 Cir. 1976). The fourth factor—the public policy favoring disposition of cases on their merits—
10 weighs against dismissal.

11 The fifth factor requires the court to consider whether less drastic alternatives can be used
12 to correct the party’s failure that brought about the court’s need to consider dismissal. Courts
13 “need not exhaust every sanction short of dismissal before finally dismissing a case, but must
14 explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th
15 Cir. 1986). Because this action cannot proceed without an operative complaint, the only
16 alternative is to enter a fourth order directing Plaintiff to file an amended complaint. The
17 circumstances here do not indicate that Plaintiff needs additional time nor is there evidence that
18 she did not receive the court’s prior orders. Setting another deadline is not a meaningful
19 alternative given these circumstances. So, the fifth factor favors dismissal.

20 In balance, the factors above favor a recommendation of dismissal. *See Hernandez v. City*
21 *of El Monte*, 138 F.3d 393 (9th Cir. 1998) (holdings dismissal is proper where least four factors
22 support dismissal or where at least three factors “strongly” support dismissal).

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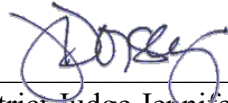
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1 IT IS THEREFORE **RECOMMENDED** that **THIS ACTION BE DISMISSED** for
2 failure to file an amended complaint by the court-ordered deadline.

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4 **ORDER**

5 The deadline for any party to object to this recommendation was 3/6/25, and no party
6 filed anything or asked to extend the deadline to do so. “[N]o review is required of a magistrate
7 judge’s report and recommendation unless objections are filed.” *United States v. Reyna-Tapia*,
8 328 F.3d 1114, 1121 (9th Cir. 2003). Having reviewed the report and recommendation, I find
9 good cause to adopt it, and I do. IT IS THEREFORE ORDERED that the Magistrate Judge’s
10 Report and Recommendation [**ECF No. 11**] is **ADOPTED** in its entirety, **this case is**
11 **DISMISSED**, and the Clerk of Court is directed to **CLOSE THIS CASE**.

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14 U.S. District Judge Jennifer A. Dorsey
15 Dated: March 10, 2025
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