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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF WASHINGTON

9 ANTONIO J. DELGADO, a married
10 man,

11 Plaintiff,

12 v.

13 JPMORGAN CHASE BANK, N.A.,
14 successor in interest by purchase
15 from the Federal Deposit Insurance
16 Corporation as Receiver of
17 Washington Mutual Bank f/k/a
18 Washington Mutual Bank, FA;
19 NORTHWEST TRUSTEE
20 SERVICES, INC.; JOHN DOES
21 NOS. 1-50,

22 Defendants.

No. CV-13-3050-RHW

**ORDER OF DISMISSAL WITHOUT
PREJUDICE**

23 **BACKGROUND**

24 On May 15, 2013, Defendants JPMorgan Chase Bank, N.A. (“Chase”) and
25 Northwest Trustee Services, Inc. (“NWTS”), removed this case from Yakima
26 County Superior Court to this Court. ECF No. 1. Defendants then filed motions to
27 dismiss on June 18 and 21, 2013. *See* ECF Nos. 6, 8. Plaintiff Antonio J. Delgado
28 did not respond to Defendants’ motions.

On September 27, 2013, the Court ordered Plaintiff to file a response to
Defendants’ motions or face dismissal of this action, without prejudice. ECF No.
11. Plaintiff again failed to respond to the Court’s Order.

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1 **DISCUSSION**

2 It is well established that district courts have the authority to dismiss for
3 failure to prosecute or to comply with court orders. *See* Fed. R. Civ. P. 41(b);
4 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992). In determining whether to
5 dismiss a case for failure to comply with a court order or failure to prosecute, the
6 district court must weigh five factors including: “(1) the public’s interest in
7 expeditious resolution of litigation, (2) the court’s need to manage its docket; (3)
8 the risk of prejudice to the defendants; (4) the public policy favoring disposition of
9 cases on their merits; and (5) the availability of less drastic alternatives.” *Ferdik*,
10 963 F.2d at 1260-61; *see also Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir.
11 1986).

12 The Ninth Circuit has held that “[t]he public’s interest in expeditious
13 resolution of litigation always favors dismissal.” *Yourish v. California Amplifier*,
14 191 F.3d 983, 990 (9th Cir. 1999). Similarly, “[i]t is incumbent upon us to preserve
15 the district courts’ power to manage their docket without being subject to the
16 endless vexatious noncompliance of litigants” *Ferdik*, 963 F.2d at 1261. In the
17 present action, the first two factors weigh in favor of dismissal. Here, Plaintiff
18 failed to respond not only to Defendants’ motions, but also to the Court’s Order
19 directing him to file a response or face dismissal of the action. This lack of
20 response, not only to the Court’s Order, but also to Defendants’ prior Motions to
21 Dismiss, clearly suggests that Plaintiff does not intend to litigate this case
22 diligently. Also, the ongoing delay would hinder the Court’s ability to manage its
23 docket.

24 The third factor the Court must consider is the risk of prejudice to the
25 Defendants. The Court must examine whether Plaintiff’s actions impaired the
26 Defendants’ ability to go to trial or threatened to interfere with the rightful decision
27 of the case. *Malone v. U.S. Postal Service*, 833 F.2d 128, 131 (9th Cir. 1987).
28 “Limited delays and the prejudice to defendant from the pendency of a lawsuit are

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1 realities of the system that have to be accepted, provided the prejudice is not
2 compounded by ‘unreasonable’ delays.” *Ash v. Cvetkov*, 739 F.2d 493, 496 (9th
3 Cir. 1984). The Court must also weigh whether prejudice is sufficient to support
4 dismissal with consideration of the strength of Plaintiff’s excuse for default. *See*
5 *Malone*, 833 F.2d at 131. In the instant case Plaintiff has offered no excuse for his
6 default. In addition, this case has been pending in this Court and the state court
7 since at least April 18, 2013. *See* ECF No. 1 at 2. Moreover, the Court finds the
8 complete lack of response by Plaintiff amounts to an unreasonable delay. In sum,
9 this factor weighs heavily in favor of dismissal.

10 The fourth factor for the Court to consider is the public policy favoring
11 disposition of cases on their merits. The Ninth Circuit has repeatedly found that
12 public policy favors disposition of cases on the merits, therefore, this factor weighs
13 against dismissal. *See Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002);
14 *Malone*, 833 F.2d at 133 n. 2.

15 The fifth factor for the Court to consider is the availability of less drastic
16 alternatives. *See U.S. v. Nat’l Med. Enter.*, 792 F.2d 906, 913 (9th Cir. 1986) (the
17 court must first consider the impact of the sanction and the adequacy of less drastic
18 sanctions). “[C]ase law suggests that warning a plaintiff that failure to obey a court
19 order will result in dismissal can suffice to meet the “consideration of alternatives”
20 requirement.” *Malone*, 833 F.2d at 132-33. This factor weighs in favor of
21 dismissal. Plaintiff was clearly instructed that he was required to file a response or
22 face dismissal, as detailed in the Court’s prior Order. *See* ECF No. 11. Moreover,
23 Plaintiff was given sufficient time within which to comply. Plaintiff’s complete
24 lack of response to the Court’s Order demonstrates an unwillingness to participate
25 in prosecuting this action.

26 After carefully weighing each of the factors, the Court finds that four out of
27 the five weigh in favor of dismissal. Accordingly, the Court orders dismissal of this
28 case without prejudice.

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1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. All pending and remaining claims and causes of actions in this matter are
3 **DISMISSED** without prejudice.

4 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
5 Order and forward copies to counsel and Plaintiff, and **CLOSE** the file.

6 **DATED** this 15th day of October, 2013.

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9 *s/Robert H. Whaley*
10 **ROBERT H. WHALEY**
Senior United States District Judge