

1 4. On April 29, 2010, the Court held a hearing¹ on the Motion for Default Judgment where
2 the Court orally granted the Motion.

3 5. The case laid dormant for over eleven years until the Plaintiffs filed a Proposed
4 Judgment on January 12, 2022.

5 III. LEGAL STANDARD

6 Rule 41(b)(1) of the Commonwealth Rules of Civil Procedure state, “For failure of the
7 plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for
8 dismissal of an action or of any claim against the defendant.” Under Federal Rule of Civil
9 Procedure 41(b)(Involuntary Dismissal)—which is identical to Com. R. Civ. Pro. 41(b)(1)²—a
10 court may dismiss an action for failure to prosecute or to comply with a court order. See *Hells*
11 *Canyon Preservation Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) (recognizing
12 that a court may *sua sponte* dismiss an action pursuant to Rule 41(b)). “A Rule 41(b) dismissal must
13 be supported by a showing of unreasonable delay.” *Omstead v. Dell, Inc.*, 594 F.3d 1081, 1084 (9th
14 Cir. 2010) (internal citation and quotation marks omitted).

15 In determining whether a Rule 41(b)(1) dismissal is appropriate, the court must weigh the
16 following factors: “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s
17 need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
18 disposition of cases on their merits and (5) the availability of less drastic sanctions.” *Villagomez v.*
19 *Marianas Ins. Co.*, 2021 MP 12, ¶ 19; *Su Yue Min v. Feng Hua Enter.*, 2017 MP 3 ¶ 20; *Wabol v.*
20 *Villacrusis*, 2000 MP 18 ¶ 19 (quoting *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir.1986)).
21 Dismissal is appropriate “where at least four factors support dismissal . . . or where at least three
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23 ¹ The Court notes that the case file does not indicate that the Defendant was served for this hearing.
24 ² *Commonwealth v. Jing Xin Xiao*, 2013 MP 12 ¶47 n. 5(stating “When a rule of this Court is “‘patterned’” after a
federal rule, it is appropriate to look to how the federal courts have interpreted that rule for guidance. *Sablan v.*
Elameto, 2013 MP 7 ¶17 (Slip Opinion, June 3, 2013) (quoting *Ishimatsu v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶60)).

1 factors strongly support dismissal.” *Su Yue Min v. Feng Hua Enter.*, 2017 MP 3 ¶ 20 (citing *Yourish*
2 *v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)) (internal citation and quotation marks
3 omitted).

4 IV. DISCUSSION

5 Striking here are: (i) the absence of necessary information; (ii) the lack of an affidavit in
6 support for a requested default judgment; (iii) the fact that a hearing on Plaintiff’s motion for a
7 default judgment was held without proper service to the Defendant; (iv) an almost twelve (12) years
8 period of inactivity between the time Plaintiff last filed legal papers in this case and the instant
9 request for judgment; and (v) legal counsel’s filing which reflect the lack of candor, diligence and
10 utmost respect due to this Court by Plaintiff’s failure to explain the true status of this case, the basis
11 for the proposed judgment submitted, or the unreasonable delay in prosecution of this matter³.

12 Accordingly, as presented, and under the test set out in *Henderson*, four of the five factors
13 used in that case to determine whether dismissal is appropriate weigh here in favor of dismissal.
14 “The first two factors—the public interest in expeditious resolution of litigation and the Court’s
15 need to manage its docket—relate to the “efficient administration of judicial business for the benefit
16 of all litigants with cases pending.” *Nealey v. Transportacion Maritima Mexicana, S.A.*, 662 F.2d
17 1275, 1279 (9th Cir. 1980). By failing to prosecute the instant matter over the past 11 or 12 years,
18 Plaintiff has delayed adjudication of this action without one word of explanation. The Court has
19 cautioned Plaintiff’s counsel that undeveloped procedural motions or requests for orders (and
20 judgments), such as the one in the instant matter, causes great delay and unnecessary burdens on the
21 Court and the staff of the Superior Court Office of the Clerk of Court and therefore also weighs in

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23 ³ A lawyer unquestionably owes the fundamental duties of dignity and professional integrity—not artifice. Coupled
24 with the above noted duties is a lawyer’s duty of simple courtesy so critical for the efficient administration of our
system of justice and the respect of the public it serves. ABA Model Rules of Professional Conduct: Preamble [5]
(Online Edition).

1 favor of dismissal. Further, non-compliance with procedural rules wastes “valuable time that [the
2 Court] could have devoted to other ... criminal and civil cases on its docket.” *Ferdik v. Bonzelet*,
3 963 F.2d 1258, 1261 (9th Cir. 1992).⁴ Thus, Plaintiff’s failure to state with particularity the
4 grounds for seeking the instant order weighs in favor of dismissing this matter for interfering with
5 the court’s need to manage its docket and the public’s interest in expeditious resolution of litigation.

6 As for the third factor, the NMI Supreme Court has previously held that unreasonable delay
7 creates a rebuttable presumption of prejudice. *Villagomez v. Marianas Ins. Co.*, 2021 MP 12, ¶ 22
8 (citing *Su Yue Min*, 2017 MP 3 ¶ 23). However, this presumption can be rebutted if no actual
9 prejudice occurred. *Su Yue Min*, 2017 MP 3 ¶ 24. In *Su Yue Min*, the NMI Supreme Court found
10 that the Superior Court in that matter properly found prejudice prong of the Rule 41(b)(1) of the
11 Commonwealth Rules of Civil Procedure analysis when the Superior Court presumed prejudice on
12 the basis of an unreasonable 3-year delay and the Plaintiff in the case did not rebut this
13 presumption. *Id.* Here, the case has been unreasonably delayed for over 11 years without proper
14 basis. The Court finds this to be an unreasonable delay far greater than the 3-year delay seen in *Su*
15 *Yue Min. Id.* The Plaintiff in this matter has failed to rebut this presumption. The unreasonable delay
16 here is of great prejudice to the defendant and weighs in favor of dismissal.

17 The fourth factor, which always favors disposition on the merits, by definition, weighs
18 against dismissal. *Villagomez v. Marianas Ins. Co.*, 2021 MP 12, ¶ 23; *Pagtalunan v. Galaza*, 291
19 F.3d 639, 643 (9th Cir. 2002)(“Public policy favors disposition of cases on the merits. Thus, this
20 factor weighs against dismissal.”) “However, this public policy interest can be outweighed by

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22 ⁴ See also Com. R.Civ.Pro. 7(b)(1)(Motions and Other Documents):

23 A request for a court order must be made by motion. The motion must be in writing unless made
24 during a hearing or trial, ***state with particularity the grounds for seeking the order***, and state the
relief or order sought. The requirement of a writing is fulfilled if the motion is stated in a written
notice of the hearing of the motion. The title of the motion must fairly identify its subject.
(Emphasis added.)

1 dilatory conduct on the part of a plaintiff’. *Su Yue Min*, 2017 MP 3 ¶ 25. In *Villagomez v. Marianas*
2 *Ins. Co.*, the NMI Supreme Court ruled that:

3 Villagomez failed to file any motion opposing the grant of summary judgment for over four
4 years. By itself, that would have been sufficient under *Su Yue Min* and *Morris* to warrant
5 dismissal for failure to prosecute. Likewise, while waiting for a ruling on the 2016 Motion
6 to Reconsider, Villagomez did not do anything for nearly three and a half years. While it is
7 true that the court's "inaction" is partly to blame for the lack of a ruling, Villagomez could
8 have brought this inaction to the court's attention much more promptly. Ultimately, filing
9 only one substantive motion in this case between 2016 and 2021, without a reasonable
10 excuse, constitutes dilatory conduct.

11 2021 MP 12, ¶ 24.

12 Here, Plaintiff’s conduct is much worse than in *Villagomez*. The Plaintiff failed to alert the
13 Court for over 11 years of non-movant in this matter and has failed to file anything substantive for
14 the same amount of time. For this reason, this Court finds that the Plaintiff engaged in dilatory
15 conduct which outweighs the public policy interest in favoring resolution on the merits. Thus, factor
16 four weighs in favor of dismissal.

17 The fifth factor is the availability of less drastic sanctions. Less drastic sanctions include,
18 but are not limited to, ‘conditional orders of dismissal, disciplinary action directed at the erring
19 attorney, monetary sanctions, and reprimands.’ *Milne v. Po Tin*, 2001 MP 16, ¶ 26. However, NMI
20 law requires only "reasonable exploration of possible and meaningful alternatives." *Su Yue Min*,
21 2017 MP 3 ¶ 26 (quoting *Anderson*, 542 F.2d at 525). In this regard, the Court could discipline
22 Plaintiff’s counsel since the Court had previously cautioned Plaintiff’s counsel about long
23 outstanding matters like this and ordering that the Plaintiff provide more information. *See Labtech*
24 *International Corp. v. Clarissa B. Adlawan*, Small Claims No. 07-0927 (NMI Super. Ct. Jan. 11,
2022) (Order) (unpublished).; *see also Ferdick*, 963 F.2d at 1262 (“A district court’s warning to a
party that failure to obey the court’s order will result in dismissal can satisfy the ‘consideration of
[less drastic sanctions] requirement.’”). However, the Court is not inclined to do so at this time, nor

1 does the Court feel that this is enough given the extreme amount of time that has passed. Thus, the
2 Court finds dismissal appropriate in this matter, but acknowledges that this prong does not weigh
3 heavily in the Court's favor.

4 **V. CONCLUSION**

5 Four of the five relevant factors weigh strongly in favor of dismissing this action.
6 Accordingly, and for the reasons stated above, Plaintiff is **ORDERED** to file a memorandum
7 within 30 days from the date of this Order explaining the 12-year delay in its prosecution of this
8 matter--including an explanation why Plaintiff suggests it is entitled to the requested judgment and
9 why this matter should not be **DISMISSED** for failure to prosecute.

10 A hearing on this issue is set for March 22, 2022 at 10:00 a.m. before Associate Judge
11 Wesley M. Bogdan. All parties are ordered to appear. Plaintiff shall serve the Defendant in this
12 matter.

13 **SO ORDERED** this 1st day of February, 2022.

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15 /s/
16 WESLEY M. BOGDAN, Associate Judge