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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RYAN SASHA GALLAGHER,
Plaintiff,
v.
BITCOINTALK.ORG, et al.,
Defendants.

Case No.18-cv-05892-JSC

**ORDER REASSIGNING CASE;
REPORT AND
RECOMMENDATION FOR
DISMISSAL**

Re: Dkt. No. 7

United States District Court
Northern District of California

Plaintiff Rev. Ryan Sasha Gallagher, proceeding pro se, filed this civil action alleging that Defendants Bitcointalk.org, Martti Malmi, and the Bitcoin Foundation are engaging in an illegal monopoly. (Dkt. No. 1.) Plaintiff’s complaint was accompanied by an application to proceed in forma pauperis, but the application to proceed in forma pauperis was incomplete. (Dkt. No. 2.) On October 10, 2018, the Court ordered Plaintiff to submit an amended application to proceed in forma pauperis by October 30, 2018. (Dkt. No. 4.) Plaintiff was warned that failure to do so could result in the denial of his application to proceed in forma pauperis. Plaintiff failed to submit an amended application by the deadline to do so. On November 8, 2018, the Court denied Plaintiff’s application to proceed in forma pauperis based on Plaintiff’s failure to submit a complete application and ordered Plaintiff to pay the filing fee within 14 days. (Dkt. No. 7.) Plaintiff was warned that failure to do so could result in a report and recommendation that this action be dismissed for failure to prosecute. To date, Plaintiff has not paid the filing fee or otherwise communicated with the Court.

Further, while Plaintiff has consented to the Court’s jurisdiction, all named parties—including unserved Defendants—must consent before a Magistrate Judge has jurisdiction under 28 U.S.C. § 636(c)(1) to hear and decide a case. *See Williams v. King*, 875 F.3d 500, 501, 504 (9th

1 Cir. 2017) (magistrate judge lacked jurisdiction to dismiss case on initial screening because
 2 unserved defendants had not consented to proceed before magistrate judge). Because the unserved
 3 Defendants have not done so here, the Clerk of the Court is ordered to REASSIGN this action to a
 4 district court judge. The Court RECOMMENDS that the district court judge dismiss the action
 5 without prejudice for failure to prosecute based on Plaintiff’s failure to comply with the Court’s
 6 orders and failure to pay the filing fee. *See* Fed. R. Civ. P. 41(b).

7 Pursuant to Federal Rule of Civil Procedure 41(b), the court may dismiss an action for
 8 failure to prosecute or to comply with a court order. *See Hells Canyon Preservation Council v.*
 9 *U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) (recognizing that a court may *sua sponte*
 10 dismiss an action pursuant to Rule 41(b)). “A Rule 41(b) dismissal must be supported by a
 11 showing of unreasonable delay.” *Omstead v. Dell, Inc.*, 594 F.3d 1081, 1084 (9th Cir. 2010)
 12 (internal citation and quotation marks omitted). In determining whether a Rule 41(b) dismissal is
 13 appropriate, the court must weigh the following factors: “(1) the public’s interest in expeditious
 14 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the
 15 defendants; (4) the public policy favoring disposition of cases on their merits and (5) the
 16 availability of less drastic sanctions.” *Id.* (quoting *Henderson v. Duncan*, 779 F.2d 1421, 1423
 17 (9th Cir.1986)). Dismissal is appropriate “where at least four factors support dismissal . . . or
 18 where at least three factors strongly support dismissal.” *Hernandez v. City of El Monte*, 138 F.3d
 19 393, 399 (9th Cir. 1998) (internal citation and quotation marks omitted).

20 Here, four of the five *Henderson* factors weigh in favor of dismissal. “The first two
 21 factors—the public interest in expeditious resolution of litigation and the Court’s need to manage
 22 its docket—relate to the “efficient administration of judicial business for the benefit of all litigants
 23 with cases pending.” *Nealey v. Transportacion Maritima Mexicana, S.A.*, 662 F.2d 1275, 1279
 24 (9th Cir. 1980). By failing to respond to the Court’s Orders and failing to pay the filing fee
 25 Plaintiff has delayed adjudication of this action. Non-compliance with procedural rules and the
 26 Court’s orders wastes “valuable time that [the Court] could have devoted to other ... criminal and
 27 civil cases on its docket.” *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992).

28 As for the third factor, while “the pendency of the lawsuit is not sufficiently prejudicial

1 itself to warrant dismissal,” the delay caused by Plaintiff’s failure to prosecute this action despite
 2 the Court’s orders weighs in favor of dismissal. *Yourish v. California Amplifier*, 191 F.3d 983,
 3 991 (9th Cir. 1999).

4 The fourth factor is the availability of less drastic sanctions. The Court already cautioned
 5 Plaintiff that failure to respond would result in dismissal of this action. (Dkt. Nos. 4, 7.) Thus, the
 6 Court has fulfilled its “obligation to warn the plaintiff that dismissal is imminent.” *Oliva v.*
 7 *Sullivan*, 958 F.2d 272, 274 (9th Cir. 1992); *see also Ferdick*, 963 F.2d at 1262 (“A district court’s
 8 warning to a party that failure to obey the court’s order will result in dismissal can satisfy the
 9 ‘consideration of [less drastic sanctions] requirement.’”). The Court also considers the strength of
 10 a plaintiff’s case, if such information is available, because the harshness of a dismissal is directly
 11 proportionate to the likelihood that the plaintiff would prevail if permitted to go forward. *See*
 12 *McHenry v. Renne*, 84 F.3d 1172, 1178-79 (9th Cir. 1996). Here, the nature of Plaintiff’s legal
 13 claims is unclear. He alleges that Defendants have denied him “any ability to compete by banning
 14 me, and slandering my name, even though I had 0 negative points in their reputation system” and
 15 that the Defendants are “monopolizing the cryptocurrency technology on their website.” (Dkt. No.
 16 1-2.) These claims fail to allege a cognizable claim for relief. The fourth factor thus weighs in
 17 favor of dismissal.

18 The last factor, which favors disposition on the merits, by definition weighs against
 19 dismissal. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002) (“Public policy favors
 20 disposition of cases on the merits. Thus, this factor weighs against dismissal.”).

21 In sum, four of the five relevant factors weigh strongly in favor of dismissing this action in
 22 its entirety. *See Pagtalunan*, 291 F.3d at 643 (affirming dismissal where three factors favored
 23 dismissal, while two factors weighed against dismissal). The Court therefore RECOMMENDS
 24 that the newly assigned district judge DISMISS this action without prejudice.¹

25
 26 ¹ Plaintiff filed a “Motion to Compel” shortly after he filed this action which appears to relate to
 27 his application to proceed in forma pauperis as it asks the Court to serve the Defendants on his
 28 behalf. (Dkt. No. 6.) Because the Court recommends that the action be dismissed for failure to
 prosecute and has denied the motion to proceed in forma pauperis, the Court recommends that the
 newly assigned district judge deny the motion to compel as moot.

1 Any party may file objections to this report and recommendation with the district court
2 judge within fourteen days after being served with a copy. *See* 28 U.S.C. § 636(b)(1)(B); Fed. R.
3 Civ. P. 72(b); Civ. L.R. 72-3. Failure to file objections within the specified time may waive the
4 right to appeal the district court's ultimate order.

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6 **IT IS SO ORDERED.**

7 Dated: November 27, 2018

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10 JACQUELINE SCOTT CORLEY
11 United States Magistrate Judge

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United States District Court
Northern District of California

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CERTIFICATE OF SERVICE

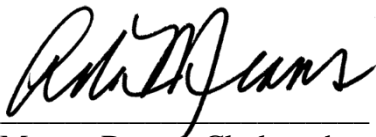
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 27, 2018, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Ryan Sasha Gallagher
1723 Candleglow Street
Castle Rock, CO 80108

Dated: November 27, 2018

Susan Y. Soong
Clerk, United States District Court

By: 
Ada Means, Deputy Clerk to the
Honorable JACQUELINE SCOTT CORLEY

United States District Court
Northern District of California