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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TAMARA LYNN FUTRELL,

Plaintiff,

No. 2:10-cv-2424 JAM KJN PS

v.

SACRAMENTO COUNTY
DEPARTMENT OF HEALTH AND
HUMAN SERVICES, et al.

Defendants.

FINDINGS AND RECOMMENDATIONS

Through these findings and recommendations, the undersigned recommends, for the second time, that plaintiff’s case be dismissed with prejudice for failure to prosecute her action and failure to comply with the court’s orders.

In an order signed on April 1, 2011, and entered on April 4, 2011, the court consolidated three actions filed by plaintiff, which were numbered 2:10-cv-02424 JAM KJN PS; 2:10-cv-02425 JAM KJN PS; and 2:10-cv-03475 JAM KJN PS (TEMP). (See Order, Apr. 4, 2011.) The court administratively closed the two latter-referenced actions. The court further ordered plaintiff to file, within 30 days of April 1, 2011, “a first amended complaint that is complete in itself and addresses all of [plaintiff’s] claims against all defendants.” (Id. at 3.) Plaintiff was required to file her first amended complaint in the consolidated action on or before

1 May 4, 2011. Plaintiff failed to file any amended pleading.

2 As a result of plaintiff's failure to file a timely first amended complaint in
3 conformity with the court's order, the undersigned entered an order to show cause that required
4 plaintiff to "show cause in writing, no later than May 20, 2011, why her lawsuit should not be
5 dismissed for failure to prosecute and failure to follow the court's orders." (Order to Show
6 Cause ("OSC"), May 6, 2011, at 2, Dkt. No. 6.) The OSC included an admonition that
7 plaintiff's failure to timely respond to the OSC would result in a recommendation that her case
8 be dismissed. (Id. at 2-3.)

9 Plaintiff failed to file a timely response to the OSC, and the undersigned
10 subsequently recommended that "Plaintiff's consolidated action be dismissed with prejudice
11 pursuant to Federal Rule of Civil Procedure 41(b) and Local Rules 110 and 183(a)." (Findings &
12 Recommendations, May 26, 2011, at 6, Dkt. No. 7.) Those proposed findings and
13 recommendations contained a detailed discussion of the standards governing *sua sponte*
14 dismissal and the reasons supporting a recommendation of dismissal with prejudice.

15 On May 27, 2011, plaintiff filed a late response to the OSC, which the court
16 construed as possible objections to the pending findings and recommendations. (See Response,
17 Dkt. No. 8.) Accordingly, in an abundance of caution the undersigned vacated the previously
18 entered findings and recommendations and provided plaintiff with 14 days from the date of that
19 order to file a first amended complaint in accordance with the court's prior orders. (Order,
20 June 9, 2011, at 6, Dkt. No. 9.) The undersigned warned plaintiff that this would be plaintiff's
21 "*final opportunity* to comply with the court's orders and file an amended complaint." (Id. at 3.)
22 Additionally, the undersigned provided the following warning: "Plaintiff's failure to timely file
23 an amended complaint in accordance with this order and the court's prior screening orders shall
24 constitute the basis for, *and plaintiff's consent to*, the involuntarily dismissal of plaintiff's case
25 with prejudice pursuant to Federal Rule of Civil Procedure 41(b)." (Id. at 6-7.)

26 The court's docket reveals that plaintiff has again failed to file a timely first

1 amended complaint. Accordingly, the undersigned recommends that plaintiff's action be
2 dismissed with prejudice for failure to prosecute and failure to comply with the court's orders.
3 The undersigned does not engage in a lengthy discussion of the facts and legal authority that
4 support such a dismissal. The undersigned already provided that analysis in the previously
5 vacated findings and recommendations and incorporates that discussion here. (See Findings &
6 Recommendations, May 26, 2011, at 3-6.) Plaintiff's additional failure to file an amended
7 complaint after being given a final opportunity to do so further supports the undersigned's
8 previous recommendation that plaintiff's action be dismissed with prejudice.

9 For the foregoing reasons, IT IS HEREBY RECOMMENDED that:

10 1. Plaintiff's consolidated action be dismissed with prejudice pursuant to
11 Federal Rule of Civil Procedure 41(b) and Local Rules 110 and 183(a).

12 2. The Clerk of Court be directed to close this case and vacate all dates.

13 These findings and recommendations are submitted to the United States District
14 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
15 days after being served with these findings and recommendations, any party may file written
16 objections with the court and serve a copy on all parties. Id.; see also E. Dist. Local Rule 304(b).
17 Such a document should be captioned "Objections to Magistrate Judge's Findings and
18 Recommendations." Any response to the objections shall be filed with the court and served on
19 all parties within fourteen days after service of the objections. E. Dist. Local Rule 304(d).
20 Failure to file objections within the specified time may waive the right to appeal the District
21 Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d
22 1153, 1156-57 (9th Cir. 1991).

23 IT IS SO RECOMMENDED.

24 DATED: June 29, 2011

25 
26 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE