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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

COREY WILLYARD,
Plaintiff,
v.
MCDANIELS, et al.,
Defendants.

No. 2:14-cv-0780-EFB (TEMP)

FINDINGS AND RECOMMENDATIONS

In a December 7, 2015 order, the assigned judge, Judge Brennan, scheduled a settlement conference in this case for February 23, 2016, at 9:00 a.m., in Courtroom No. 25 before the undersigned. (ECF No. 18.) The order specifically cautioned that the “failure of any counsel, party or authorized person subject to this order to appear in person may result in the imposition of sanctions.” (Id.)

At the February 23, 2016 settlement conference, attorney Gary Brickwood appeared on behalf of defendants, along with assistant county counsel Jim Ross. Both of defendants’ representatives traveled over 150 miles from Redding to Sacramento for the settlement conference. However, even though the court trailed the start of the settlement conference by 30 minutes, plaintiff, who proceeds without counsel, failed to appear.

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1 Consequently, on February 25, 2016, the court issued an order to show cause. (ECF No.
2 21.) In that order, the court acknowledged that the December 7, 2015 order scheduling the
3 settlement conference was returned to the court as undeliverable. Nevertheless, the court noted
4 that it was also informed that one of the court's administrators had obtained plaintiff's new
5 contact information through plaintiff's probation officer, and was ultimately able to speak to
6 plaintiff and notify him regarding the date and time of the settlement conference. Indeed, that
7 communication apparently prompted plaintiff to file a notice of change of address on February
8 10, 2016. (ECF No. 19.) At the February 23, 2016 settlement conference, defendants' counsel
9 also advised the court that he had sent an additional notice of the settlement conference to
10 plaintiff's new address, once the notice of change of address was filed. As such, it appeared that
11 plaintiff was well aware of the settlement conference, but nonetheless failed to appear without
12 providing any notice to defendants' counsel or the court. Thus, the court directed plaintiff to
13 show cause, within seven (7) days, why he should not be required to pay \$250.00 in sanctions
14 based on his failure to appear at the court-ordered settlement conference. The court specifically
15 cautioned plaintiff that failure to respond to the order by the required deadline may result in
16 dismissal of the action with prejudice pursuant to Federal Rule of Civil Procedure 41(b).

17 Although the applicable deadline has now passed, plaintiff failed to respond to the court's
18 order to show cause. Therefore, the court recommends dismissal at this juncture.

19 A court must weigh five factors in determining whether to dismiss a case for failure to
20 prosecute, failure to comply with a court order, or failure to comply with a district court's local
21 rules. See, e.g., Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992). Specifically, the court
22 must consider:

- 23 (1) the public's interest in expeditious resolution of litigation; (2)
24 the court's need to manage its docket; (3) the risk of prejudice to
25 the defendants; (4) the public policy favoring disposition of cases
 on their merits; and (5) the availability of less drastic alternatives.

26 Id. at 1260-61; accord Pagtalunan v. Galaza, 291 F.3d 639, 642-43 (9th Cir. 2002). The Ninth
27 Circuit Court of Appeals has stated that "[t]hese factors are not a series of conditions precedent
28 before the judge can do anything, but a way for a district judge to think about what to do." In re

1 Phenylpropanolamine (PPA) Prods. Liab. Litig., 460 F.3d 1217, 1226 (9th Cir. 2006).

2 Here, the first two factors strongly weigh in favor of dismissal, because plaintiff's failure
3 to appear at a court-ordered settlement conference and comply with court orders have delayed
4 resolution of the action and impacted an already-congested court docket. The third factor also
5 favors dismissal, because defendants have already been prejudiced, at a minimum, by plaintiff's
6 failure to appear at a settlement conference to which they traveled over 150 miles. With respect
7 to the fifth factor, the court first attempted lesser sanctions by issuing an order to show cause and
8 cautioning plaintiff that the case may be dismissed if he failed to comply with court orders.
9 However, plaintiff ultimately ignored that order. Finally, as to the fourth factor addressing the
10 policy favoring disposition of cases on their merits, it is plaintiff's own actions that preclude a
11 resolution on the merits here. In any event, the fourth factor is clearly outweighed by the other
12 factors.


13 Accordingly, IT IS HEREBY RECOMMENDED that:

- 14 1. The action be dismissed pursuant to Federal Rule of Civil Procedure 41(b).
- 15 2. The Clerk of Court be directed to close this case.

16 These findings and recommendations are submitted to the assigned judge, Judge Brennan.
17 Within fourteen (14) days after being served with these findings and recommendations, any party
18 may file written objections with the court and serve a copy on all parties. Such a document
19 should be captioned "Objections to the Findings and Recommendations." Any reply to the
20 objections shall be served on all parties and filed with the court within fourteen (14) days after
21 service of the objections. The parties are advised that failure to file objections within the
22 specified time may waive the right to appeal the District Court's order. Turner v. Duncan, 158
23 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

24 IT IS SO RECOMMENDED.

25 Dated: March 10, 2016

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28 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE