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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RAYMOND ALFORD BRADFORD,

Plaintiff,

v.

C. OGBUEHI, et al.,

Defendants.

Case No. 1:15-cv-01918-AWI-BAM (PC)

ORDER DENYING PLAINTIFF’S MOTION
FOR AN ORDER COMPELLING
DISCOVERY
(Doc. No. 55)

ORDER DENYING PLAINTIFF’S MOTION
TO STRIKE DEFENDANTS’ MOTION FOR
SUMMARY JUDGMENT
(Doc. No. 65)

ORDER DENYING PLAINTIFF’S MOTION
FOR EXTENSION OF TIME
(Doc. No. 67)

ORDER DENYING PLAINTIFF’S
MOTIONS FOR SANCTIONS AND
MOTION TO STRIKE OPPOSITION TO
MOTION TO COMPEL
(Doc. Nos. 70, 71, 72)

FINDINGS AND RECOMMENDATIONS
RECOMMENDING TERMINATING
SANCTIONS AGAINST PLAINTIFF

FOURTEEN-DAY DEADLINE

I. Background

Plaintiff Raymond Alford Bradford is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff’s claim against Defendants Ogbuehi and Nietas in their individual capacity for deliberate indifference to a serious medical need in violation of the Eighth Amendment.

1 Plaintiff's claims are based on allegations that Defendants delayed and interfered with his need
2 for treatment for ulcerative colitis and related symptoms, from August 5, 2015 until August 29,
3 2017. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. §
4 636(b)(1)(B) and Local Rule 302.

5 Currently before the Court are several motions filed by Plaintiff. First, on September 19,
6 2018, Plaintiff filed a motion for an order compelling discovery. (Doc. No. 55.) Defendants
7 filed an opposition on October 10, 2018. (Doc. No. 64.) Rather than filing a reply to the
8 opposition, Plaintiff then filed a motion to strike Defendants' opposition to the motion to compel.
9 (Doc. No. 71.)

10 Next, on October 3, 2018, Defendants filed a motion for summary judgment under
11 Federal Rule of Civil Procedure 56 for the failure to exhaust available administrative remedies.
12 (Doc. No. 62.) Plaintiff has now made numerous filings in response to that motion, including (1)
13 a motion to strike Defendants' summary judgment motion, filed on October 18, 2018 (Doc. No.
14 65); (2) a declaration in support of the motion to strike (Doc. No. 66); (3) a motion for an
15 extension of time to oppose Defendants' summary judgment motion, filed on October 18, 2018
16 (Doc. No. 67); (4) a declaration in support of the motion for extension of time; (5) a motion for
17 sanctions under Federal Rule of Civil Procedure 9(b), with a declaration in support, filed on
18 October 22, 2018 (Doc. No. 70); and (6) a second motion for sanctions under Rule 9(b), filed on
19 October 22, 2018 (Doc. No. 72).

20 Although Defendants have not responded to all of Plaintiff's motions described above,
21 the Court finds it necessary to rule on these matters, and that Defendants will not be prejudiced
22 by the Court acting on those motions. Therefore, the motions are deemed submitted. Local Rule
23 230(l).

24 **II. Motion to Compel and Motion to Strike Opposition**

25 Plaintiff's motion to compel discovery pursuant to Rule 37(a) seeks responses to requests
26 for production of documents, which Plaintiff attaches. (Doc. No. 55.) In his attached
27 declaration, Plaintiff declares that he served the requests for production on or about July 18,
28 2018. (Pl.'s Decl., Doc. No. 55, ¶ 2.) Plaintiff asserts that he met and conferred with defense

1 counsel by letter when Defendants failed to respond to the requests for production after the
2 August 31, 2018 deadline to respond expired. Plaintiff also seeks legal supplies as a sanction, as
3 well as reasonable expenses, for the failure to produce responses. The attached requests for
4 production are dated July 12, 2018. (Pl.'s Requests for Production, Doc. No. 55, at 5-7.)
5 Plaintiff's motion to compel was provided to prison officials for mailing and service on
6 September 9, 2018, according to the attached proof of service. (Doc. No. 55 at 4.)

7 Defendants oppose Plaintiff's motion to compel, arguing that it is misleading and
8 unwarranted. (Doc. No. 64.) Specifically, Plaintiff did not file with the Court his proof of
9 service for the requests for production of documents at issue, and that proof of service shows that
10 Plaintiff's discovery responses were not served until July 25, 2018. (Decl. of Parnell, Doc. No.
11 64, ¶ 2; Pl.'s Proof of Service, Doc. No. 64, Ex. A.) Under the July 3, 2018 discovery and
12 scheduling order in this case, written responses to discovery requests are due within forty-five
13 (45) days of service. (Doc. No. 50 ¶ 2.) Thus, Defendants' responses to Plaintiff's requests for
14 production were due on or before September 10, 2018.¹ Therefore, based on the proof of service
15 for Plaintiff's motion to compel which was attached to that filing, he provided the motion to
16 prison officials for mailing to the Clerk of the Court *before* Defendants' deadline to respond to
17 his discovery requests had passed.

18 Moreover, Plaintiff sent a letter to defense counsel regarding the requests for production
19 on August 27, 2018 (also sent before the deadline to respond had passed). In the letter, Plaintiff
20 demanded the discovery responses and indicated that he would be filing a motion to compel.
21 (Decl. of Parnell ¶ 3; Aug. 27, 2018 Letter, Doc. 64, Ex. B.) Defense counsel quickly responded,
22 providing clarification of the response deadline, (Decl. of Parnell ¶ 4; Sept. 7, 2018 Letter, Doc.
23 64, Ex. C), and Defendants served those responses by mail on Plaintiff on the September 10,
24 2018 deadline, (Decl. of Parnell ¶ 5; Decl. of Service by U.S. Mail, Doc. No. 64, Ex. D).

25 Nevertheless, Plaintiff sent a follow-up letter to defense counsel on September 17, 2018.
26 (Decl. of Parnell ¶ 7; Sept. 17, 2018 Letter, Doc. 64, Ex. E.) The letter does not respond to the

27 ¹ The forty-five (45) day deadline fell on a Saturday. Pursuant to Federal Rule of Civil
28 Procedure 6(a)(1)(c), the deadline was extended until Monday, September 10, 2018.

1 deadline issue, or discuss the responses to Plaintiff’s requests for production served on July 25,
2 2018. Instead, Plaintiff states that he is requesting all documents related to another case,
3 *Bradford v. Marchak et al.*, Case No. 1:14-cv-01689-LJO-BAM. He further demands all his
4 mental health and medical records. He states that he has filed a motion to compel, and that he
5 will withdraw or quash the motion if he is provided all items demanded, as well as writing
6 supplies, postage, and envelopes. Finally, he requests a settlement offer and to see defense
7 counsel in person “to put a face with the name Laraya.” (*Id.*) Defense counsel declares that after
8 receiving this letter, she attempted to schedule a telephone conference with Plaintiff, but was
9 unable to do so before Defendants’ opposition was due to the motion to compel. (Decl. of
10 Parnell ¶ 8.) Defendants argue that based on the foregoing, the motion should be denied as
11 premature and unnecessary.²

12 Rather than file a reply to the opposition, Plaintiff instead filed a motion to strike
13 Defendants’ opposition and defense counsel’s declaration in support thereof. (Doc. No. 71.)
14 Plaintiff argues that his motion is not premature because he attempted to meet and confer with
15 defense counsel. Plaintiff further states that Defendants objected to providing the documents he
16 requested from *Bradford v. Marchak et al.* as irrelevant to this matter, which he argues supports
17 striking Defendants’ opposition as frivolous. Plaintiff further asserts that “[a]” telephone call
18 [would] have resolved this matter” and he contends that it is not his fault that the telephonic
19 conference was unable to be set. (*Id.* at 3.) Plaintiff nevertheless argues that a motion to compel
20 would have been inevitable in this matter due to Defendants’ failure or refusal to provide the
21 documents requested from *Bradford v. Marchak et al.*, along with all his medical and mental
22 health records. (Pl.’s Decl. dated Oct. 16, 2018, Doc. No. 71, ¶ 2.)

23 ² *Bradford v. Marchak et al.*, No. 1:14-cv-01689-LJO-BAM, was dismissed upon the granting of
24 the defendants’ motion for terminating sanctions in that case, upon a finding of bad faith
25 conduct, the failure to obey a court order, and the failure to meaningfully cooperate in discovery,
26 on July 7, 2018. (Order, Doc. No. 336.) Plaintiff appealed the dismissal on July 23, 2018, and
27 the Ninth Circuit dismissed the appeal on September 18, 2018. (Notice of Appeal, Doc. No. 341;
28 Order, Doc. No. 346.) The Court takes judicial notice of those proceedings, as a district court
may take judicial notice of its records and of the records of proceedings in other federal or state
courts. *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th
Cir. 1992).

1 Given the foregoing, the Court finds that Plaintiff's motion to compel and motion to
2 strike must both be denied. Plaintiff's requests for production were served on Defendants on
3 July 25, 2018, and pursuant to the Court's discovery and scheduling order, responses were not
4 due until September 10, 2018. Plaintiff's motion was prematurely filed before that date, and
5 regardless Defendants timely provided responses to the requests. Plaintiff's motion to strike the
6 opposition and defense counsel's declaration in support has no merit, as he has not shown that
7 the filings are frivolous. Instead, the opposition properly raised grounds for why the motion to
8 compel should be denied and the declaration provided information in support, which Plaintiff
9 does not adequately dispute. Plaintiff's request for sanctions must also be denied, as Defendants
10 have not failed to provide discovery responses here.

11 More troubling is Plaintiff's conduct here. It is well settled that a party may be
12 sanctioned, up to and including dismissal of an action, for engaging in "deliberately in deceptive
13 practices that undermine the integrity of judicial proceedings[.]" *Anheuser-Busch, Inc. v. Nat.*
14 *Beverage Distributors*, 69 F.3d 337, 348 (9th Cir. 1995). "[C]ourts have inherent power to
15 dismiss an action when a party has willfully deceived the court and engaged in conduct utterly
16 inconsistent with the orderly administration of justice." *Id.*; *see also Wyle v. R.J. Reynolds*
17 *Indus., Inc.*, 709 F.2d 585, 589 (9th Cir.1983) (upholding dismissal of complaint pursuant to
18 court's inherent power where plaintiff's denials of material fact were knowingly false and
19 plaintiff willfully failed to comply with discovery orders); *Combs v. Rockwell Int'l Corp.*, 927
20 F.2d 486 (9th Cir.1991) (affirming dismissal under the court's inherent power as appropriate
21 sanction for falsifying a deposition), *cert. denied*, 502 U.S. 859, 112 S. Ct. 176, 116 L. Ed. 2d
22 138 (1991); *North Am. Watch Corp. v. Princess Ermine Jewels*, 786 F.2d 1447, 1451 (9th
23 Cir.1986) (affirming dismissal of defendant's counterclaim under court's inherent power for
24 concealing documents and violating court's discovery order).

25 Here, in pursuing this motion to compel, Plaintiff has engaged in misrepresentations and
26 omissions of information which is misleading to the parties and the Court. Plaintiff has also
27 pursued baseless motions, needlessly multiplying the proceedings. As pointed out by
28 Defendants, Plaintiff omitted from his motion to compel a proof of service showing the date that

1 the discovery requests at issue were served. Plaintiff further declared to the Court that the
2 requests were served at an earlier date with an earlier deadline for the responses than was true,
3 misrepresenting facts material to the motion.

4 Information showing the actual deadline for the discovery response, and the discovery
5 responses that were sought by Plaintiff in the motion to compel, were both timely provided by
6 Defendants and defense counsel to Plaintiff. Also, Defendants provided the same information to
7 the Court in its opposition to Plaintiff's motion to compel, which was served on Plaintiff, and
8 which clarified any misunderstanding that might have occurred. All of this showed that
9 Plaintiff's motion was, at best, prematurely filed. However, rather than withdrawing the motion,
10 adding clarification, or attempting to make any showing of cause for continuing to pursue the
11 motion to compel, Plaintiff used the pending nature of the motion to make demands of
12 Defendants and defense counsel. This included unreasonably demanding documents from an
13 unrelated case which has long been closed. Plaintiff also filed a motion to strike and requested
14 sanctions without any basis, increasing the proceedings, further causing prejudice to Defendants,
15 and wasting judicial resources.

16 The Court finds that Plaintiff's conduct under the circumstances constitutes bad faith, and
17 will recommend sanctions based upon that conduct and other matters, as discussed further below.

18 **III. Motion to Strike Summary Judgment Motion and for Sanctions**

19 Additional proceedings merit discussion before the Court explains its recommendation
20 for sanctions.

21 Earlier in this case, on August 7, 2018, Plaintiff filed a motion for leave to amend the
22 complaint. (Doc. No. 52.) Defendants filed an opposition to the motion, (Doc. No. 53), and no
23 reply was filed within the time permitted, Local Rule 230(l). On September 17, 2018, the Court
24 denied the motion, finding that Plaintiff did not attach any proposed amended pleading, leaving
25 the Court with insufficient information to determine whether leave to amend should be granted.
26 (Doc. No. 54.) Plaintiff was instructed that he may resubmit a motion for leave supported by a
27 proposed amended complaint. (*Id.* at 2.)

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1 On September 19, 2018, Plaintiff filed a reply to Defendants’ opposition to his motion for
2 leave to amend. (Doc. No. 54.) The Court evaluated the reply, but found that it showed no cause
3 to reconsider the prior ruling, and issued an order informing Plaintiff of such ruling on
4 September 20, 2018. (Doc. No. 57.)

5 On September 24, 2018, Plaintiff filed a motion to strike Defendants’ opposition to his
6 motion for leave to amend, (Doc. No. 58), and a second reply to the opposition, (Doc. No. 59).
7 On September 26, 2018, the Court denied Plaintiff’s motion to strike, finding no support in the
8 record for his contentions that the opposition was misleading and confusing. (Doc. No. 60.) The
9 Court also struck the second reply, finding that Plaintiff had not sought any leave to file an
10 additional reply, that multiple reply briefs are not allowed by the applicable rules, and that it had
11 not authorized or requested any additional briefing. (*Id.* at 2.) Finally, the Court expressly
12 warned Plaintiff that “the needless multiplying of the proceedings and wasting of judicial
13 resources, such as submitting any baseless filings in bad faith or for harassment, will subject a
14 party to sanctions.” (*Id.*)

15 This is not the first warning of this nature that Plaintiff has been given in court orders.
16 As noted above, one of Plaintiff’s prior actions, *Bradford v. Marchak et al.*, No. 1:14-cv-01689-
17 LJO-BAM, was dismissed upon the granting of the defendants’ motion for terminating sanctions
18 in that case. (July 7, 2018 Order, Doc. No. 336.) Among the many express warnings to Plaintiff
19 in that case was that baseless or duplicative filings, filings made for harassment, or filings that
20 needlessly multiply the proceedings, would be summarily stricken and would subject a party to
21 sanctions, including terminating sanctions. (*See* June 18, 2018 Findings and Recommendations,
22 Doc. No. 334, at 3-6, discussing several express warnings to Plaintiff.) Plaintiff was also
23 expressly warned in that action against filing multiple motions or other filings on the same
24 matter, and warned that each issue must be addressed in a single filing stating all of the grounds
25 for his motion and all of the relief sought. Further, Plaintiff was warned not to make duplicative
26 motions seeking the same relief as a prior motion that has not yet been ruled upon by the Court.
27 (*See* April 16, 2018 Order, Doc. No. 287, at 9.) Due to Plaintiff’s repeated violation of the court
28 orders in *Marchak* giving those warnings, and due to other violations of the Federal Rules of

1 Civil Procedure, that matter was dismissed. Against this backdrop, the Court turns to additional
2 motions now pending in the instant case.

3 As stated above, Defendants filed a motion for summary judgment on October 3, 2018,
4 for the failure to exhaust available administrative remedies. (Doc. No. 62.) In response to that
5 motion, Plaintiff has made a flurry of filings, none of which are a single, complete opposition to
6 the motion raising all of Plaintiff's grounds for opposing summary judgment. Instead, Plaintiff
7 has first filed a motion to strike Defendants' summary judgment motion, on October 18, 2018.
8 (Doc. No. 65.) Plaintiff argues that the summary judgment motion is "without merit and absurd"
9 and constitutes fraud, but there is no support for these contentions in the motion. (*Id.* at 2.)
10 Plaintiff merely states that he has filed 80 appeals over a span of 30 years, and therefore
11 Defendants make a "fatal mistake" in arguing that he did not exhaust his administrative appeals
12 in this case. (*Id.* at 3.) Plaintiff also filed a separate declaration in support of his motion to
13 strike, which is essentially duplicative of the motion and repeats his arguments. (Doc. No. 66.)

14 Plaintiff next filed a motion for an extension of time to oppose Defendants' motion for
15 summary judgment. (Doc. No. 67.) Plaintiff again contends that the summary judgment motion
16 is absurd, and seeks to extend the deadline for his opposition to allow the Court to review the
17 record and rule on the additional motions that he filed, including his allegations of fraud. (*Id.*)
18 In a final sentence, Plaintiff also states that he seeks for the Court to stay summary judgment to
19 allow him to obtain his legal property so that he can present evidence of his over 80 exhausted
20 appeals. (*Id.* at 6.) Plaintiff also filed a separate declaration raising the same arguments, and
21 discussing in more detail that he requires a stay and an order to grant him access to his legal
22 property to obtain his 80 exhausted appeals. (Doc. No. 68.)

23 Finally, on October 22, 2018, Plaintiff filed two separate motions for sanctions under
24 Rule 9(b). (Doc. No. 70, 72.) Both motions are largely duplicative of each other, and argue that
25 Defendants have committed fraud by filing their summary judgment motion, because Plaintiff
26 did in fact exhaust his available administrative remedies. No support is given for his contentions
27 that he exhausted the available administrative remedies for his claim in this case. Nor does
28 Plaintiff provide any support for his contentions that Defendants brought their summary

1 judgment motion to cause undue delay, prejudice and harassment, rather than as a colorable legal
2 argument supported by evidence.

3 Plaintiff's motion to strike Defendants' summary judgment motion shall be denied. The
4 fact that Plaintiff disagrees with the arguments raised in the motion and believes he has evidence
5 to refute the motion is not sufficient grounds to strike the filing, particularly where Plaintiff does
6 not support his contentions. Plaintiff has been warned against filing such baseless motions
7 before, in this action, (*see* Sept. 26, 2018 Order, Doc. No. 60), and in prior actions, (*see, e.g.*,
8 April 2, 2018 Order, *Bradford v. Marchak et al.*, No. 1:14-cv-01689-LJO-BAM, Doc. No. 266).

9 Plaintiff's motion for an extension of time and to stay summary judgment shall also be
10 denied. His main argument for the extension of time is frivolous and evidence of bad faith.
11 Plaintiff cannot file duplicative or baseless motions and filings, and then argue that deadlines
12 should be extended because the Court will require time to review the record and make rulings.
13 As discussed above, he has been repeatedly warned against such tactics.

14 Further, the Court does not find it appropriate to stay summary judgment so that Plaintiff
15 can obtain records of 80 appeals spanning 30 years. Many, if not most, of those appeals are not
16 likely to be relevant to the limited scope of the claim in this case concerning the delay and denial
17 of treatment for Plaintiff's ulcerative colitis from 2015 to 2017. The introduction of such
18 irrelevant evidence would constitute an additional needless multiplication of the proceedings.
19 Plaintiff has not shown good cause for delaying these proceedings based on a specific need to
20 obtain records to oppose Defendants' summary judgment motion regarding the claims in this
21 case.

22 The Court also denies Plaintiff's motions for sanctions. That Defendants are defending
23 this action and have filed a motion in support of their affirmative defense of the failure to
24 exhaust available administrative remedies does not constitute grounds for sanctions. Although
25 Plaintiff contends that the motion does not have merit, he has not demonstrated that Defendants
26 or defense counsel have made baseless or frivolous filings for an improper purpose in this action.
27 Defendants are entitled to defend this action, to raise their affirmative defenses, and to not
28 concede that Plaintiff's claim is meritorious.

1 Based on the overall record in this case, including Plaintiff’s numerous repetitive,
2 onerous, baseless, and frivolous filings, and his misleading and harassing tactics, the Court turns
3 to a consideration of sanctions against Plaintiff.

4 **III. Recommendation for Terminating Sanctions**

5 **A. Legal Standard**

6 Rule 11 “provides for the imposition of sanctions when a filing is frivolous, legally
7 unreasonable, or without factual foundation, or is brought for an improper purpose.” *Estate of*
8 *Blue v. Cty. of Los Angeles*, 120 F.3d 982, 985 (9th Cir. 1997). “‘Frivolous filings’ are those that
9 are ‘both baseless and made without a reasonable and competent inquiry.’” *Buster v. Greisen*,
10 104 F.3d 1186, 1190 (9th Cir. 1997) (quoting *Townsend v. Holman Consulting Corp.*, 929 F.2d
11 1358, 1362 (9th Cir. 1990) (en banc)). “The test for whether Rule 11 is violated does not require
12 a finding of subjective bad faith by the attorney or unrepresented party.” *McMahon v. Pier 39*
13 *Ltd. P’ship*, No. C03-00251 CRB, 2003 WL 22939233, at *6 (N.D. Cal. Dec. 5, 2003).

14 In addition to Rule 11, courts also have the “inherent power to levy sanctions, including
15 attorneys’ fees, for ‘willful disobedience of a court order . . . or when the losing party has acted
16 in bad faith, vexatiously, wantonly, or for oppressive reasons.’” *Fink v. Gomez*, 239 F.2d 989,
17 991 (9th Cir. 2001) (quoting *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 766 (1980)). Under
18 the court’s inherent power, sanctions are only available “if the court specifically finds bad faith
19 or conduct tantamount to bad faith.” *Id.* at 994. Conduct that is tantamount to bad faith includes
20 “recklessness when combined with an additional factor such as frivolousness, harassment, or an
21 improper purpose.” *Id.* District courts have the inherent power to control their dockets and “[i]n
22 the exercise of that power they may impose sanctions including, where appropriate, . . .
23 dismissal.” *Thompson v. Hous. Auth.*, 782 F.2d 829, 831 (9th Cir. 1986).

24 It is well-settled in the Ninth Circuit that the filing of “successive complaints based upon
25 propositions of law previously rejected may constitute harassment under Rule 11.” *Buster*, 104
26 F.3d at 1190 (quoting *Zaldivar v. City of Los Angeles*, 780 F.2d 823, 833 (9th Cir. 1986)). This is
27 true even when a plaintiff is proceeding *pro se*. *E.g., Valtierra v. World Sav. Bank*, No. 1:12-
28 CV-1227-AWI-BAM, 2012 WL 5396689, at *3 (E.D. Cal. Nov. 2, 2012).

1 **B. The Court Finds that Plaintiff Acted in Bad Faith**

2 The discovery and scheduling order was issued in this case about four months ago, on
3 July 3, 2018. (Doc. No. 50.) Shortly thereafter, Plaintiff began his pattern of filing improper
4 motions and duplicative filings, delaying this case and wasting judicial resources. This began
5 with the motion to amend discussed above, filed on August 7, 2018, and the numerous repeated
6 filings on that matter, including Plaintiff’s baseless motion to strike Defendants’ opposition to
7 the motion after it had already been ruled upon. Plaintiff then filed the premature motion to
8 compel discovery responses, and his numerous motions related to Defendants’ summary
9 judgment motion, as explained above.

10 The Court will not belabor the details of the record carefully laid out above, but notes
11 here that in the few months since the Court issued the July 3, 2018 discovery and scheduling
12 order, Plaintiff has filed no less than fifteen motions, requests, and objections for the Court to
13 rule upon. (Doc. Nos. 52, 55, 56, 58, 59, 61, 63, 65, 66, 67, 68, 69, 70, 71, 72.) Plaintiff’s
14 onerous, often successive filings, are repeatedly duplicative and unsupported, and have begun to
15 fill the docket with meritless matters. This order alone rules on six such motions. Although
16 some leniency is due to Plaintiff as a *pro se* litigant, he has engaged in improper litigation tactics
17 to mislead the parties and the Court, and his filings have continued despite express warnings by
18 the Court. Plaintiff’s *pro se* status does not excuse intentional non-compliance with the Federal
19 Rules of Civil Procedure or court orders. *See Lindstedt v. City of Granby*, 238 F.3d 933, 937
20 (8th Cir. 2000) (affirming sanction of dismissal, holding that “[a] *pro se* litigant is bound by the
21 litigation rules as is a lawyer”); *see also Warren v. Guelker*, 29 F.3d 1386, 1390 (9th Cir.
22 1994) (holding that district court could not decline to impose any sanction for violation of Fed.
23 R. Civ. P. 11 simply because plaintiff was proceeding *pro se*).

24 In short, the Court finds that Plaintiff’s conduct in this case is obstructive and constitutes
25 willful disregard for the Court’s orders, abusive and bad faith litigation tactics, and the needless
26 multiplication of the proceedings. The Court next turns to whether terminating sanctions are
27 appropriate.

28 ///

1 **C. Terminating Sanctions are Appropriate**

2 In determining whether to dismiss an action, the Court must consider several factors: (1)
3 the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its
4 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
5 cases on their merits; and (5) the availability of less drastic sanctions. *Henderson v. Duncan*,
6 779 F.2d 1421, 1423 (9th Cir. 1986); *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988). The
7 amount of prejudice resulting from the discovery violations and the availability of less drastic
8 sanctions are said to be “key factors.” *Wanderer v. Johnston*, 910 F2d 652, 656 (9th Cir. 1990).

9 Here, the first two factors, the public’s interest in expeditious resolution of litigation and
10 the Court’s need to manage its docket, weigh in favor of dismissal. *See Yourish v. Cal.*
11 *Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999) (“[T]he public’s interest in expeditious resolution of
12 litigation always favors dismissal.”). This case was filed on December 28, 2015. (Doc. No. 1.)
13 It was originally dismissed on the denial of Plaintiff’s motion for leave to proceed *in forma*
14 *pauperis*, on March 4, 2016. (Doc. No 6, 7.) The Ninth Circuit Court of Appeals reversed and
15 remanded that dismissal on March 20, 2017, (Doc. No. 12), and the mandate issued on April 11,
16 2017, (Doc. No. 14).

17 Thus, this litigation was effectively restarted on April 12, 2017, when the Court ordered
18 Plaintiff to resubmit a motion for leave to proceed *in forma pauperis*. Rather than moving along
19 expeditiously with this litigation, Plaintiff has engaged in dilatory and obstructionist tactics as
20 discussed above, and this case has become an undue consumption and waste of limited judicial
21 resources to manage and address Plaintiff’s filings. Plaintiff was expressly warned in this action,
22 as well as in previous court orders in a prior action, that such conduct would lead to sanctions.
23 In fact, he was subjected to terminating sanctions for just the same type of conduct which he is
24 now engaged in during the instant action. Nevertheless, Plaintiff continues to engage in bad faith
25 litigation tactics and willful misconduct. This Court has not lost sight of the strong interest in
26 resolving cases on the merits. But even this strong interest in deciding cases on the merits cannot
27 override a litigant’s conduct in refusing to abide by court orders, insisting on multiplying the
28 proceedings, and wasting judicial resources.

1 The third factor, risk of prejudice to Defendants, also weighs in favor of dismissal. There
2 is a rebuttable presumption of prejudice to a defendant that arises when a plaintiff unreasonably
3 delays litigation. *In re Eisen*, 31 F.3d 1447, 1452–53 (9th Cir. 1994). “To prove prejudice, a
4 defendant must establish that plaintiff’s actions impaired defendant’s ability to proceed to trial or
5 threatened to interfere with the rightful decision of the case.” *Pagtalunan v. Galaza*, 291 F.3d
6 639, 642 (9th Cir. 2002) (citing *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 131 (9th Cir. 1987)).
7 Here, Plaintiff’s conduct substantially hinders Defendants’ ability to defend against his claim in
8 this lawsuit. Plaintiff’s pursuit of duplicative baseless motions with misleading information has
9 required Defendants to expend resources responding to those filings, and the Court to expend
10 resources resolving such issues. Plaintiff has also purposely attempted to delay and obstruct
11 Defendants’ summary judgment motion without cause, as discussed above. The inability to fully
12 defend the case or to move forward with any potential dispositive motions, coupled with the
13 delay, is prejudicial to Defendants.

14 The fourth factor—public policy favoring disposition of cases on their merits—is greatly
15 outweighed by the factors in favor of dismissal discussed herein. When a case has stalled or is
16 unreasonably delayed by a party’s conduct, including misrepresentations and baseless motions,
17 the case cannot move toward resolution on the merits. Thus, the fourth factor—public policy
18 favoring disposition of cases on their merits—is not compelling when it is thwarted by Plaintiff’s
19 own actions.

20 Next, the Court has considered lesser sanctions, but no lesser sanction is warranted.
21 Evidentiary sanctions are not practical given the stage of the litigation and the nature of the
22 current issues raised. Monetary sanctions are worthless because of Plaintiff’s *in forma pauperis*
23 status. He would likely be unable to pay any monetary sanctions, making such sanctions of little
24 use here. Most importantly, the Court repeatedly warned Plaintiff in this case and in prior cases
25 about the consequences of the conduct he has engaged in here and noncompliance with the
26 Court’s orders and the Federal Rules of Civil Procedure, but Plaintiff’s continued conduct shows
27 a lack of intent to follow those warnings, rulings, orders, and requirements. The Ninth Circuit
28 has explained that “[a] district court need not exhaust every sanction short of dismissal before

1 finally dismissing a case, but must explore possible and meaningful alternatives.” *Henderson v.*
2 *Duncan*, 779 F.2d 1421, 1424 (9th Cir.1986). Here, the Court finds that there are no other, lesser
3 sanctions that would be satisfactory or effective.

4 Accordingly, based on the record, the orders of which the Court takes judicial notice of as
5 discussed above, and the relevant factors, the Court recommends terminating sanctions in this
6 case.

7 **IV. Conclusion**

8 Accordingly, it is HEREBY ORDERED that:

9 1. Plaintiff’s motion for an order compelling discovery, filed on September 19, 2018
10 (Doc. No. 55), is denied;

11 2. Plaintiff’s motion to strike Defendants’ opposition to motion to compel, filed on
12 October 22, 2018 (Doc. No. 71), is denied;

13 3. Plaintiff’s motion to strike Defendants’ summary judgment motion, filed on
14 October 18, 2018 (Doc. No. 65), is denied;

15 4. Plaintiff’s motion for an extension of time to oppose Defendants’ summary
16 judgment motion, filed on October 18, 2018 (Doc. No. 67), is denied;

17 5. Plaintiff’s motion for sanctions under Federal Rule of Civil Procedure 9(b), filed
18 on October 22, 2018 (Doc. No. 70), is denied; and

19 6. Plaintiff’s second motion for sanctions under Rule 9(b), filed on October 22, 2018
20 (Doc. No. 72), is denied.

21 ***

22 Further, for the reasons explained above, the Court HEREBY RECOMMENDS that this
23 action be dismissed, with prejudice, based on Plaintiff’s abusive and bad faith litigation tactics,
24 failure to obey a court order, and needless multiplication of the proceedings.

25 These Findings and Recommendation will be submitted to the United States District
26 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
27 **fourteen (14) days** after being served with these Findings and Recommendation, the parties may
28 file written objections with the court. The document should be captioned “Objections to

1 Magistrate Judge’s Findings and Recommendation.” The parties are advised that failure to file
2 objections within the specified time may result in the waiver of the “right to challenge the
3 magistrate’s factual findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.
4 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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6 IT IS SO ORDERED.

7 Dated: November 6, 2018

/s/ Barbara A. McAuliffe
8 UNITED STATES MAGISTRATE JUDGE

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