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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 ROBERT VALENTE,) Case No.: 1:17-cv-00218-LJO-JLT
12 Plaintiff,)
13 v.) ORDER DISMISSING CASE FOR FAILURE
14 KELLER WILLIAMS REALTY, INC., et al.,) TO PROSECUTE AND FAILURE TO COMPLY
15 Defendants.) WITH A COURT ORDER
16)

17 Robert Valente filed a Complaint in this case on February 15, 2017, alleging many entities
18 are liable for civil rights violations, deceit, negligent misrepresentation, constructive fraud,
19 negligence, loss of consortium, intentional infliction of emotional distress, and negligent infliction
20 of emotional distress related to the purchase of a home in Tennessee. His Complaint was dismissed
21 with leave to amend on September 8, 2017, and Plaintiff was given until October 8, 2017 to file an
22 amended complaint. (Doc. 6.) The deadline for amendment was later extended to October 25, 2017.
23 (Doc. 10 at 5.) Plaintiff was warned that if he “fails to file an amended complaint, the action may be
24 dismissed for failure to prosecute and failure to obey the Court’s order.” (*Id.*)

25 Instead of filing an amended complaint, on October 13, 2017, Plaintiff filed a motion to
26 transfer venue to the Northern District of California in Oakland, arguing that the transfer is
27 appropriate because, among other things, he has moved from within the Eastern District to Oakland.
28 (Doc. 11.) On October 23, 2017, this Court denied without prejudice Plaintiff’s motion to transfer

1 as “inappropriate under the circumstances because there is no operative, viable complaint in this
2 case.” (Doc. 12.) The Court explained that “[u]nless and until Plaintiff files a complaint that states
3 viable claims, this Court will not consider transferring his case to another district.” (*Id.*) Plaintiff
4 was given until November 10, 2017 to file an amended complaint. He was specifically warned that
5 if he “fails to file an amended complaint by the new deadline, this case will be dismissed without
6 prejudice for failure to comply with a Court order.” (*Id.*) The November 10, 2017 deadline has
7 come and gone.

8 It is well established that a district court has the authority to dismiss an action because of a
9 Plaintiff’s failure to prosecute or to comply with court orders. *See Link v. Wabash R. Co.*, 370 U.S.
10 626, 629-30 (1962) (the court’s authority to dismiss for failure to prosecute is necessary in order to
11 prevent undue delays in the disposition of pending cases and to avoid congestion in district court
12 calendars); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (recognizing that the district
13 court may dismiss an action for failure to comply with a court order).

14 In determining whether to dismiss a case for failure to prosecute or to comply with court
15 orders, a court must consider five factors: (1) the public’s interest in expeditious resolution of
16 litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to defendant; (4) the
17 public policy favoring disposition of cases on their merits; and (5) the availability of less drastic
18 alternatives. *See In re Eisen*, 31 F.3d 1447, 1451 (9th Cir. 1994) (failure to prosecute); *Ferdik*, 963
19 F.2d at 1260-61 (failure to comply with court orders).

20 In this case, the public’s interest in expeditiously resolving this litigation and the Court’s
21 interest in managing its docket weigh in favor of dismissal. Plaintiff has failed to respond to the
22 Court’s direct order to file an amended complaint. The third factor, the risk of prejudice to
23 defendant, also weighs in favor of dismissal because “[t]he law presumes injury from unreasonable
24 delay.” *In re Eisen*, 31 F.3d at 1452 (*quoting Anderson v. Air West, Inc.*, 542 F.2d 522, 524 (9th
25 Cir. 1976)). This presumption may be rebutted “if there is a showing that no actual prejudice
26 occurred.” *Id.* at 1452-53. However, Plaintiff offers no excuse or reason for the delay. The fourth
27 factor—public policy favoring disposition of cases on their merits—does not outweigh Plaintiff’s
28 failure to file an amended complaint that attempts to state viable claims. Finally, a “court’s warning

1 to a party that his failure to obey the court's order will result in dismissal can satisfy the
2 'consideration of alternatives' requirement." *Ferdik*, 963 F.2d at 1262 (quoting *Malone v. United*
3 *States Postal Serv.*, 833 F.2d 128, 132-33 (9th Cir. 1987)). As mentioned, the Court specifically
4 warned Plaintiff that if he "fails to file an amended complaint by the new deadline, this case will be
5 dismissed without prejudice for failure to comply with a Court order." Accordingly, the
6 "consideration of alternatives" requirement is satisfied. *Id.*

7 In sum, the above factors weigh in favor of dismissal for failure to prosecute and failure to
8 comply with a Court order.

9 **CONCLUSION AND ORDER**

10 For the reasons discussed above, this Court:

- 11 1. DISMISSES without prejudice Plaintiff's claims for failure to prosecute and
12 failure to comply with a Court order; and
13 2. DIRECTS the clerk to close this action.

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15 IT IS SO ORDERED.

16 Dated: November 16, 2017

/s/ Lawrence J. O'Neill
17 UNITED STATES CHIEF DISTRICT JUDGE
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