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

CARL ROBERT WICKLUND,

Plaintiff,

No. 2: 10-cv-2161 KJN P

vs.

QUEEN OF THE VALLEY
MEDICAL CENTER, et al.,

Defendants.

ORDER AND

FINDINGS AND RECOMMENDATIONS

_____/

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. On December 28, 2011, defendants filed a motion for summary judgment. On January 5, 2011, the court advised plaintiff of the requirements for opposing a motion pursuant to Rule 56 of the Federal Rules of Civil Procedure. See Rand v. Rowland, 154 F.3d 952, 957 (9th Cir. 1998) (en banc), and Klinge v. Eikenberry, 849 F.2d 409, 411-12 (9th Cir. 1988).

On February 29, 2012, the court granted plaintiff a thirty day extension of time to file his opposition to defendants’ summary judgment motion. Thirty days passed and plaintiff did not file his opposition or otherwise respond to the February 29, 2012 order.

“Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss

1 an action for failure to comply with any order of the court.” Ferdik v. Bonzelet, 963 F.2d 1258,
2 1260 (9th Cir. 1992). “In determining whether to dismiss a case for failure to comply with a
3 court order the district court must weigh five factors including: ‘(1) the public’s interest in
4 expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of
5 prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits;
6 and (5) the availability of less drastic alternatives.’” Ferdik, 963 F.2d at 1260-61 (quoting
7 Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986)); see also Ghazali v. Moran, 46
8 F.3d 52, 53 (9th Cir. 1995).

9 In determining to recommend that this action be dismissed, the court has
10 considered the five factors set forth in Ferdik. Here, as in Ferdik, the first two factors support
11 dismissal of this action. The action has been pending for 1 ½ years and has reached the stage, set
12 by the court’s August 12, 2011 scheduling order, for resolution of dispositive motions and, if
13 necessary, preparation for pretrial conference and jury trial. Plaintiff’s failure to comply with the
14 Local Rules suggests that he has abandoned this action and that further time spent by the court
15 thereon will consume scarce judicial resources in addressing litigation which plaintiff
16 demonstrates no intention to pursue.

17 Under the circumstances of this case, the third factor, prejudice to defendants
18 from plaintiff’s failure to oppose the motion, also favors dismissal. Plaintiff’s failure to oppose
19 the motion prevents defendants from addressing plaintiff’s substantive opposition, and would
20 delay resolution of this action, thereby causing defendants to incur additional time and expense.

21 The fifth factor also favors dismissal. The court has advised plaintiff of the
22 requirements under the Local Rules and granted ample additional time to oppose the pending
23 motion, all to no avail. The court finds no suitable alternative to dismissal of this action.

24 The fourth factor, public policy favoring disposition of cases on their merits,
25 weighs against dismissal of this action as a sanction. However, for the reasons set forth supra,
26 the first, second, third, and fifth factors strongly support dismissal. Under the circumstances of

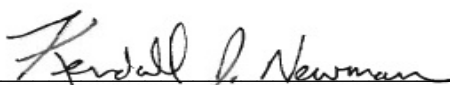
1 this case, those factors outweigh the general public policy favoring disposition of cases on their
2 merits. See Ferdik, 963 F.2d at 1263.

3 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court shall assign
4 a district judge to this action; and

5 IT IS HEREBY RECOMMENDED that this action be dismissed without
6 prejudice pursuant to Federal Rule of Civil Procedure 41(b).

7 These findings and recommendations are submitted to the United States District
8 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-
9 one days after being served with these findings and recommendations, any party may file written
10 objections with the court and serve a copy on all parties. Such a document should be captioned
11 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
12 objections shall be filed and served within fourteen days after service of the objections. The
13 parties are advised that failure to file objections within the specified time may waive the right to
14 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

15 DATED: April 10, 2012

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18 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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