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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

YOLANDA YVETTE BELL,
Plaintiff,
v.
UNITED STATES DEP'T OF INTERIOR,
KENNETH SALAZAR, Secretary,
Defendant.

No. 2:12-cv-1414-TLN-JFM PS

ORDER AND
FINDINGS & RECOMMENDATIONS

I. INTRODUCTION

On August 28, 2013, a hearing was held on this court's order to show cause. ECF No. 141. Plaintiff appeared telephonically in pro per, and Victoria Boesch appeared on behalf of defendant. After considering the supporting documentation and oral arguments, and for the reasons discussed at the hearing, IT IS HEREBY RECOMMENDED that this action be dismissed for failure to comply with discovery rules and this court's orders.

II. BACKGROUND

On December 27, 2011, plaintiff, a former GS-14 Supervisory Contract Specialist for the Department of the Interior Bureau of Reclamation ("DOI/BOR"), initiated her employment discrimination action in the Northern District of California naming DOI/BOR; Kenneth Salazar, Secretary; Donald Glaser; Katherine Thompson; and Joni Ward as defendants.¹ ECF No. 1. On

¹ On May 24, 2012, the Northern District of California issued an order transferring plaintiff's

1 January 12, 2012, plaintiff filed her operative first amended complaint, alleging violations of (1)
2 Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq.; (2) the Rehabilitation Act of
3 1973, 29 U.S.C. §§ 710 et seq.; (3) reprisal for engaging in protected activities; and (4) a hostile
4 and abusive work environment.² ECF No. 5.

5 On November 20, 2012, the parties filed a joint status report. ECF No. 58. Following the
6 court's November 29, 2012, initial scheduling conference, the court ordered the parties to
7 complete discovery by May 3, 2013. ECF No. 62. On February 6, 2013, the parties filed a
8 stipulation to continue the scheduling order dates by two months. ECF No. 64. This stipulation
9 was entered into pursuant to plaintiff's request to accommodate her illness. See ECF No. 71-2 at
10 19-20. On February 21, 2013, the court granted the parties' stipulation, and continued the
11 discovery cut-off deadline to July 3, 2013. ECF No. 65.

12 On March 22, 2013, plaintiff filed a motion to continue the scheduling order deadlines by
13 an additional four months because she had been "severely ill" and "experiencing severe financial
14 hardship." ECF No. 68. Defendant opposed plaintiff's motion, arguing that she had failed to
15 conduct any discovery, which included a failure to respond to existing discovery requests, and to
16 appear for her properly noticed deposition. ECF No. 74. Based on plaintiff's failures to respond
17 to defendant's properly served and noticed discovery requests, defendant filed a motion to
18 dismiss for failure to prosecute and a motion for discovery sanctions in the form of dismissal.
19 ECF Nos. 71, 75.

20 In defendant's opposition to plaintiff's motion to continue, and related motions for
21 dismissal, defendant summarized plaintiff's failures to provide discovery responses or deposition
22 testimony. ECF No. 71. Defendant's first set of discovery requests were served on January 25,
23 2013. Id. at 2, Exs. B and C. At plaintiff's request, the deadline for her responses to these
24 discovery requests was extended to March 25, 2013. Id., Ex. E. Defendant served a second set of
25 action to the Eastern District of California pursuant to the parties' stipulation, and because
26 plaintiff was employed in Sacramento and most of the witnesses appear to reside in this district.
ECF No. 33.

27 ² On September 11, 2012, the court adopted findings and recommendations recommending
28 granting defendants Glaser, Thompson and Ward's motion to dismiss, and dismissing them from
this action. ECF No. 54.

1 discovery requests on April 2, 2013. As of the filing of defendant's motions in mid-May, plaintiff
2 had not provided responses to these requests which were due on March 25, 2013 and May 6,
3 2013, respectively. ECF No. 71-1 at 3.

4 With regard to plaintiff's deposition, defendant originally noticed it for March 27, 2013,
5 but later rescheduled it to April 25, 2013, pursuant to plaintiff's request. ECF No. 71-1 at 2, Ex.
6 E. On April 24, 2013, plaintiff e-mailed defense counsel indicating she would not appear for her
7 April 25, 2013, deposition, and did not provide an alternate date. Id., Ex. M. On April 24, 2013,
8 defense counsel responded to plaintiff's e-mail, explaining that defendant would "file a motion
9 with the Court regarding [plaintiff's] failure to respond to discovery that seeks all available
10 remedies, which may include termination of [plaintiff's] case." Id. at 3, Ex. N. Despite
11 defendant's warning, and with the understanding that she would be facing a motion to dismiss her
12 action, plaintiff failed to appear for her April 25, 2013, deposition. Id. at 3.

13 On May 29, 2013, the court heard plaintiff's motion to continue the scheduling order; and
14 defendant's motion to dismiss for failure to prosecute and motion for discovery sanctions. ECF
15 No. 82. During the hearing, the undersigned explained to plaintiff that an extension of the
16 scheduling order deadlines cannot be granted without good cause which requires a showing of
17 due diligence. The court noted that although plaintiff did not dispute that she had failed to timely
18 respond to defendant's discovery efforts, her request for additional time offered no clear
19 explanation of what efforts or actions she took to conduct any meaningful discovery or to respond
20 to the defendant's discovery requests up to that point. See ECF No. 68. Given plaintiff's lack of
21 effort to comply with her obligations and the absence of any showing that she was not able to
22 meet the deadlines in spite of those efforts, plaintiff failed to demonstrate the requisite good cause
23 for an extension of time.

24 Notwithstanding plaintiff's lack of diligence, the undersigned took account of plaintiff's
25 claimed medical and financial difficulties and her pro se status, and continued the discovery and
26 dispositive motions cut-off by two additional months, setting a September 3, 2013, discovery cut-
27 off deadline. ECF No. 83. The undersigned also ordered that "[n]o further modifications of the
28 scheduling order will be granted except upon a showing of good cause" per Johnson v. Mammoth

1 Recreations, Inc., 975 F.2d 604 (9th Cir. 1992). Id. While considering defendant’s motion to
2 dismiss, the court noted that it was premature to impose sanctions in the form of dismissal
3 without having first warned the plaintiff that dismissal was imminent. Id. (citing Johnson v. U.S.
4 Dept. of Treasury, 939 F. 2d 820, 825-26 (9th Cir. 1991)). The court therefore explicitly put
5 plaintiff on notice that if she failed to litigate her case or comply with court rules or orders, her
6 case could be dismissed. Id. The court also denied defendant’s motion for discovery sanctions.
7 Id. (citing Hyde & Drath v. Baker, 24 F.3d 1162, 1167 (9th Cir. 1994)).

8 On July 31, 2013, defendant filed a motion to compel independent medical examination
9 pursuant to Fed. R. Civ. P. 35. ECF No. 102. Following the court’s August 7, 2013, hearing on
10 defendant’s motion, and plaintiff’s subsequent opposition thereto, the court issued an order
11 granting defendant’s motion and ordering plaintiff to appear for an independent medical
12 examination by Dr. Mark Mills, M.D., on August 21, 2013, in Chevy Chase, Maryland.³ ECF
13 No. 129. In the order granting defendant’s motion, the court found good cause for a Rule 35
14 examination because plaintiff’s allegations that defendant’s conduct caused her numerous
15 physical and mental health-related injuries put her mental state “genuinely in controversy.” Id. at
16 12 (citing Schlagenhauf v. Holder, 379 U.S. 104, 118 (1964)). The court also addressed
17 plaintiff’s hardship concerns regarding a forty-mile drive from her home in Virginia to Maryland
18 for the examination. The court found, among other things, that “[t]he location for the
19 examination is in reasonable proximity to the location where plaintiff resides and any
20 inconvenience or burden from driving to the exam is minimal in contrast to the burden plaintiff
21 will face by proceeding to trial in this case.” Id. at 13.

22 Plaintiff did not seek reconsideration of this court’s August 19, 2013, order compelling
23 her independent medical exam. See Fed. R. Civ. P. 72; L.R. 303.

24 The morning of the scheduled examination, on August 21, 2013, plaintiff drove to Dr.
25 Mills’ office but would not leave her car to enter his office for the examination. Plaintiff refused

26 _____
27 ³ The court also heard plaintiff’s motion to quash and motion for protective order on August 7,
28 2013. ECF No. 129. Those motions are not relevant to this court’s analysis. However, plaintiff’s
filings over the past several months do illustrate that plaintiff is capable of litigating her action
when she wishes to do so.

1 to appear for the examination claiming that she was concerned with Dr. Mills' office location.
2 That same morning, following some telephonic discussions between the parties, the court held a
3 telephonic conference with the parties during which plaintiff articulated the following additional
4 concerns: Dr. Mills' office was located in a residential area, his office is not zoned properly, and
5 he is not licensed to practice in Maryland. Defense counsel represented that Dr. Mills spoke with
6 plaintiff outside his office assured her that she was at his office and offered for her to look around
7 his office. The undersigned considered plaintiff's objections and specifically declined to vacate
8 the August 19, 2013, order requiring the examination. ECF No. 132. During the telephone
9 conference, the court explained to plaintiff that the court had previously found Dr. Mills to be
10 eminently well-qualified to conduct the examination, and the fact that his office is in what she
11 considers a residential area does not alter the court's ruling. The court specifically admonished
12 plaintiff as to the consequences of failing to comply with the court's order "and that sanctions
13 could include an order to compensate for the costs incurred by defendant for having the medical
14 expert waiting on plaintiff, and/or an order for dismissal of the action." Id. The court advised
15 plaintiff that if she violated the order, the matter would proceed by way of an Order to Show
16 Cause. The court noted that defendant would have to file a motion for an order to show cause in
17 the event plaintiff failed to proceed with the scheduled examination. Id.

18 Notwithstanding the court's ruling, and the earlier admonition on August 21, 2013,
19 regarding failure to comply with discovery rules and orders, plaintiff refused to comply with this
20 court's explicit order to appear for her examination. Accordingly, defendant filed an application
21 for order to show cause regarding sanctions.⁴ ECF No. 133. Defendant seeks reimbursement of
22 Dr. Mills' examination fee as well as dismissal of plaintiff's action. On August 26, 2013, this

23
24 ⁴ In the interim, plaintiff filed another motion to continue the scheduling order deadlines (ECF
25 No. 122), a "motion for reasonable accommodation" (ECF No. 121), and a related request to seal
26 exhibits (ECF No. 131). In light of the court's findings and recommendations, these outstanding
27 motions and requests are denied. The court notes, however, that these motions simply underscore
28 the pattern of plaintiff litigating this action only at her convenience rather than by adhering to the
Federal Rules of Civil Procedure, the Local Rules of this court, or this court's orders.
Additionally, plaintiff's related August 26, 2013, "emergency ex parte application and declaration
for shortening time" (ECF No. 139) was rendered moot by this court's prior order setting an
August 28, 2013, hearing on plaintiff's motion to continue, and is therefore also denied. See ECF
No. 136.

1 court ordered plaintiff to appear to show cause why her case should not be dismissed for failure to
2 appear for the court-ordered examination. ECF No. 136.

3 III. DISCUSSION

4 Defendant's application for an order to show cause requests both reimbursement for Dr.
5 Mills' \$3,600.00 examination fee and an order of dismissal. ECF No. 133. Defendant argues that
6 plaintiff's refusal to attend the examination came just two weeks before the September 3, 2013,
7 discovery cut-off deadline, and has deprived defendant of "critical evidence needed to prepare a
8 defense to her allegations." *Id.* at 2. Defendant points to plaintiff's prior obstructions of
9 discovery efforts such as her failure to respond to discovery requests, her efforts to quash
10 defendant's third party subpoenas, and now her attempt to "evade" her independent medical
11 examination. *Id.* In opposing dismissal, plaintiff repeats her argument, *inter alia*, that Dr. Mills'
12 office was in a residential area and he is not licensed to practice in Maryland, therefore she was
13 justified in not attending the court-ordered independent medical examination.⁵ ECF No. 137. For
14 the reasons discussed below, the court recommends that plaintiff's action be dismissed with
15 prejudice for repeated failures to comply with discovery rules and court orders.⁶

16 A. Legal Standard

17 "Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss an
18 action for failure to comply with any order of the court." *Ferdik v. Bonzelet*, 963 F.2d 1258,
19 1260 (9th Cir. 1992). "A district court must weigh five factors in determining whether to dismiss

20 ⁵ Plaintiff filed a request to seal an exhibit attached to her opposition to defendant's ex parte
21 application for order to show cause. ECF No. 138. She describes the exhibit as a "[l]etter
22 regarding specific health conditions of Plaintiff and current status thereof." *Id.* However, the
23 exhibit is a July 25, 2013, letter from plaintiff's treating physician regarding defendant's third
24 party subpoena; and has already been submitted by plaintiff on more than one occasion. *See* ECF
Nos. 137-2 at 11 and 100-16 at 1. Therefore, plaintiff's request to seal is denied. Because
plaintiff has already submitted this exhibit, plaintiff will not be ordered to re-file the exhibit as
unsealed.

25 ⁶ In her opposition to defendant's application, plaintiff requested that the undersigned recuse
26 himself because of the court's determination that Dr. Mills is eminently well-qualified to conduct
27 her independent medical examination. The court construes plaintiff's request as a motion for
28 recusal. As stated on the record during the court's August 28, 2013, order to show cause hearing,
the court made this finding after reviewing Dr. Mills' curriculum vitae which was an exhibit
properly before the court. *See* ECF No. 102-1. The fact that the court considered Dr. Mills'
qualifications is in no way a consideration of information outside the record or a showing of bias.
Therefore, plaintiff's motion for recusal is denied.

1 a case for failure to comply with a court order: “(1) the public’s interest in expeditious resolution
2 of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants;
3 (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less
4 drastic sanctions.” Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (internal
5 quotations and citations omitted). These relevant factors should be explicitly addressed when
6 contemplating dismissal. Pagtalunan v. Galaza, 291 F.3d 639, 641 (9th Cir. 2002). However,
7 these factors are “a way for a district judge to think about what to do, not a series of conditions
8 precedent before the judge can do anything.” Valley Engineers, Inc. v. Electric Engineering Co.,
9 158 F.3d 1051, 1057 (9th Cir. 1998).

10 B. Analysis

11 For the reasons discussed below, the court finds each of the factors set forth in Malone
12 weigh in favor of dismissal of this action pursuant to Fed. R. Civ. P. 41(b).

13 (1) The Public’s Interest in Expeditious Resolution of Litigation

14 “The public’s interest in expeditious resolution of litigation always favors dismissal.”
15 Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999). This action was initiated
16 over a year and a half ago in December 2011. See Ferdik, 963 F.2d at 1261 (finding dismissal
17 was strongly favored because the plaintiff’s “case dragged on for over a year and a half before it
18 finally was dismissed”). Plaintiff’s failure to comply with specific court orders, as well as her
19 failure to conduct any meaningful discovery during the eight months the discovery period has
20 been open has impeded the interest in expeditious resolution of this litigation.

21 (2) The Court’s Need to Manage Its Docket

22 “The trial judge is in the best position to determine whether the delay in a particular case
23 interferes with docket management and the public interest.” Pagtalunan, 291 F.3d at 642 (citing
24 Yourish, 191 F.3d at 990). Here, plaintiff’s deliberate delay in litigating her action by attending
25 to the matters required by the Federal Rules of Civil Procedure, compounded by the flurry of
26 motions she has instead filed over the past several months, have consumed a significant amount
27 of the court’s time and resources. Despite the time and effort expended, and the twice-extended
28 discovery deadline which has given plaintiff more than adequate time to begin to litigate her

1 action, this matter has not moved forward toward resolution on the merits. Instead, plaintiff has
2 devoted a significant amount of time interfering with defendant's attempts to complete discovery
3 in this case. Plaintiff's obstructionist behavior has included her refusal to attend her deposition
4 thereby requiring a noticed motion, hearing and an order that she attend, her failure to respond to
5 written discovery, and her deliberate failure to comply with this court's order to appear for a Rule
6 35 examination--even after a telephonic conference call in which the court reconfirmed its order
7 that the exam go forward. Considering plaintiff's incessant delay and failure to comply with
8 court-imposed deadlines and orders to comply with discovery rules, the court does not foresee a
9 change in her unwillingness to recognize the court's need to manage its docket. See id. ("It is
10 incumbent upon the Court to manage its docket without being subject to routine noncompliance
11 of litigants.") (citation omitted); see also Ferdik, 963 F.2d at 1261 (finding dismissal appropriate
12 because the action "consumed large amounts of the court's valuable time.") The court has
13 repeatedly warned and admonished plaintiff, all with no affect. Therefore, the court finds this
14 factor weighs in favor of dismissal.

15 (3) The Risk of Prejudice to the Defendants

16 "To prove prejudice, a defendant must establish that plaintiff's actions impaired
17 defendant's ability to proceed to trial or threatened to interfere with the rightful decision of the
18 case." Pagtalunan, 291 F.3d at 642 (citing Malone, 833 F.2d at 131); see also Adriana Intern.
19 Corp. v. Thoenen, 913 F.2d 1406, 1412 (9th Cir. 1990). Here, defendant has been prejudiced by
20 plaintiff's actions. The discovery cut-off was September 3, 2013. Defendant scheduled
21 plaintiff's independent medical examination for August 21, 2013. The lack of the independent
22 medical examination deprives defendant of the opportunity to prepare a defense to plaintiff's
23 allegations which include numerous health-related injuries that she allegedly sought treatment for.
24 Moreover, this is not the first time plaintiff has obstructed defendant's discovery efforts. Plaintiff
25 has failed to both timely respond to discovery requests and appear for her noticed deposition. See
26 ECF No. 83; see also In re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d
27 1217, 1227 (9th Cir. 2006) ("[t]he law also presumes prejudice from unreasonable delay") (citing
28 Morris v. Morgan Stanley & Co., 942 F.2d 648, 652 (9th Cir. 1991)). Defendant has had to

1 repeatedly engage plaintiff in unproductive calls, emails and correspondence imploring her to
2 comply with the discovery rules and the court's orders. And after the meet and confer attempts
3 failed, defendants have had to pursue motions and attend hearings to obtain orders for plaintiff to
4 comply. Plaintiff has needlessly increased the cost and burden of responding to her allegations in
5 the complaint.

6 The court finds that plaintiff's actions have impaired defendant's ability to proceed to trial
7 or prepare an effective defense to her allegations. See Adriana, 913 F.2d at 1412 (finding
8 prejudice was established because "the repeated failure of [plaintiff] to appear at scheduled
9 dispositions compounded by their continuing refusal to comply with court-ordered production of
10 documents constitutes an interference with the rightful decision of the case"); see also Malone,
11 833 F.2d at 131 ("intentional and unjustified violation of the pretrial order prejudiced the
12 Government in a manner which justifies dismissal"). Therefore, the court finds this factor weighs
13 in favor of dismissal.

14 (4) The Public Policy Favoring Disposition of Cases on Their Merits

15 "Public policy favors disposition of cases on the merits." Pagtalunan, 291 F.3d at 643
16 (citing Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998)). "At the same time, a
17 case that is stalled or unreasonably delayed by a party's failure to comply with deadlines and
18 discovery obligations cannot move forward toward resolution on the merits. Thus, [the Ninth
19 Circuit has] also recognized that this factor lends little support to a party whose responsibility it is
20 to move a case toward disposition on the merits but whose conduct impedes progress in that
21 direction." In re Phenylpropanolamine, 460 F.3d at 1228 (internal quotation and citation
22 omitted).

23 Here, plaintiff has made little effort to move this case forward on the merits. She has
24 failed to timely respond to discovery, appear for her deposition and now appear for her court-
25 ordered medical examination. While plaintiff claims she is willing to appear for the examination
26 (apparently on terms more to her liking), her actions indicate otherwise. The court finds that
27 plaintiff's repeated delays thus far cause this factor to weigh in favor of dismissal.

28 ////

1 (5) The Availability of Less Drastic Alternatives

2 It is important for the district court to consider less drastic alternatives than dismissal of a
3 party's action. Pagtalunan, 291 F.3d at 643 (citing Yourish, 191 F.3d at 992). As discussed
4 below, the court has carefully done so here.

5 [The Ninth Circuit] conducts a three-part analysis when
6 determining whether a district court has properly considered the
7 adequacy of less drastic sanctions: (1) did the court explicitly
8 discuss the feasibility of less drastic sanctions and explain why
9 alternative sanctions would be inappropriate, (2) did the court
implement alternative sanctions before ordering dismissal, and (3)
did the court warn the party of the possibility of dismissal before
actually ordering dismissal?

10 Adriana, 913 F.2d at 1412-13 (citing Malone, 833 F.2d at 132). "But despite all this elaboration
11 of factors, [the Ninth Circuit has] said that it is not always necessary for the court to impose less
12 serious sanctions first, or to give any explicit warning." Valley Engineers Inc., 158 F.3d at 1057
13 (citing Adriana, 913 F.2d at 1413).

14 With regard to feasibility, the court has considered less drastic sanctions and found them
15 to be ineffective. The court considered imposing monetary sanctions on plaintiff at the hearing
16 on defendant's motion to dismiss and motion for sanctions on May 29, 2013. However, given
17 plaintiff's representations to defense counsel and to the court of her financial hardship, the court
18 determined that a monetary sanction would simply go unpaid and would not deter future
19 noncompliance. During the court's most recent order to show cause hearing, on August 28, 2013,
20 plaintiff again conveyed her financial hardship, indicating that she was unsure how she would be
21 able to pay her rent the following week. Thus, monetary sanctions, while less drastic, offers no
22 effective means of deterring plaintiff's recalcitrance.

23 With regard to implementation of alternative sanctions, rather than imposing monetary
24 sanctions on plaintiff following the court's May 29, 2013, hearing, the court resorted to several
25 firm warnings that future noncompliance with this court's orders as well as the Federal Rules and
26 Local Rules, could result in dismissal of her action. ECF Nos. 83, 132; see Malone, 833 F.2d at
27 132 ("warning a plaintiff that failure to obey a court order will result in dismissal can suffice to
28 meet the 'consideration of alternatives' requirement") (citations omitted). In an effort to avoid

1 the harsh sanction of dismissal, the court warned plaintiff of the possibility of dismissal but also
2 made the following efforts to accommodate her alleged hardships: twice extending the discovery
3 cut-off; ordering the parties to attempt to conduct plaintiff's deposition by video conference so
4 plaintiff would not have to travel from Virginia to this district; suggesting the parties discuss
5 alternative methods of production of documents in order for plaintiff to avoid the cost of copying
6 and mailing responses to defendant's requests for production; and recognizing defendant's efforts
7 to accommodate plaintiff by ordering plaintiff to appear for a Rule 35 examination in Maryland
8 rather than in the forum state of California. ECF Nos. 65, 83, 129; see Malone, 833 F.2d at 132
9 (finding "district court's imposition of less drastic measures for lack of preparation during the
10 aborted first trial [was] sufficient indication . . . that alternatives were considered prior to
11 dismissal of [the plaintiff's] case for lack of preparation")

12 With regard to warning plaintiff of the possibility of dismissal before actually ordering
13 dismissal, plaintiff has been warned on more than one occasion that failure to comply with the
14 court's orders and discovery rules could result in dismissal of her action. See ECF No. 83 at 3
15 (warning plaintiff that "failure to timely respond to further discovery requests or to appear for
16 deposition will result in sanctions which may include dismissal of her case"). Moreover, the
17 court specifically warned plaintiff that her case could be dismissed if she failed to appear for her
18 independent medical examination. ECF No. 132; see Adriana, 913 F.2d at 1413 (the court must
19 "identify the party's action that will lead to the sanction") (citing In re Rubin, 769 F.2d 611, 618
20 n.7 (9th Cir. 1985)). At some point, enough is enough.

21 Given the futility of imposing monetary sanctions, the court's efforts to accommodate
22 plaintiff, the implementation of several prior warnings, and the court's specific warning that
23 plaintiff's case could be dismissed if she failed to comply with this court's order to appear for her
24 examination, the court finds this factor weighs in favor of dismissal.

25 C. Conclusion

26 For the foregoing reasons, the court finds that the above-referenced factors all weigh in
27 favor of dismissal. Plaintiff's noncompliance has been deliberate and has caused repeated delays
28 and rescheduling of deadlines, an expenditure of a significant amount of this court's time and

1 resources, and an impairment of defendant's ability to proceed to trial.⁷ Therefore, the court
2 recommends dismissing plaintiff's action for a failure to comply with court orders.

3 III. CONCLUSION

4 Accordingly, IT IS HEREBY ORDERED that:

5 1. Plaintiff's August 13, 2013, motion for a reasonable accommodation (ECF No. 121) is
6 denied;

7 2. Plaintiff's August 13, 2013, motion to continue the scheduling order deadlines (ECF
8 No. 122) is denied;

9 3. Plaintiff's August 19, 2013, request to seal (ECF No. 131) and August 26, 2013,
10 request to seal (ECF No. 138) are denied;

11 4. Plaintiff's August 26, 2013 motion for recusal (ECF No. 137) is denied;

12 5. Plaintiff's August 26, 2013, ex parte application for an order shortening time (ECF No.
13 139) is denied as moot; and

14 6. The Clerk is directed to reassign this action to the undersigned.

15 Further, it is HEREBY RECOMMENDED that this action be dismissed with prejudice for
16 failure to comply with court orders.

17 These findings and recommendations are submitted to the United States District Judge
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
19 after being served with these findings and recommendations, any party may file written
20 objections with the court and serve a copy on all parties. Such a document should be captioned
21 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
22 objections shall be filed and served within fourteen days after service of the objections. The
23 parties are advised that failure to file objections within the specified time may waive the right to
24 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

25 DATED: September 11, 2013.

26 
27 EDMUND F. BRENNAN
28 UNITED STATES MAGISTRATE JUDGE

28 ⁷ Indeed, at times plaintiff's conduct has appeared calculated to cause delay.