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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JESUS ANDRES LOPEZ,  
Plaintiff,  
v.  
COLUSA COUNTY SHERIFF'S  
DEPARTMENT et al.,  
Defendant.

No. 2:12-cv-1571 DAD P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action seeking relief under 42 U.S.C. § 1983. This matter is before the court on defendants' second motion for summary judgment brought pursuant to Rule 56 of the Federal Rules of Civil Procedure.<sup>1</sup> Plaintiff has not filed an opposition to the motion.

For the reasons set forth below, the court will dismiss this action pursuant to Federal Rule of Civil Procedure 41(b).<sup>2</sup>

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<sup>1</sup> On November 21, 2013, the court granted defendants' first motion for summary judgment, which addressed plaintiff's claim that defendants' treatment of his diabetes condition was constitutionally inadequate. In a subsequent order, the court granted defendants leave to act out of time to file this second motion for summary judgment addressing plaintiff's remaining Fourteenth Amendment claims regarding defendants' treatment of plaintiff's high blood pressure, acid-reflux, and restless leg syndrome conditions.

<sup>2</sup> Both parties have consented to Magistrate Judge jurisdiction over this action pursuant to 28 U.S.C. § 636(c). (Doc. Nos. 5 & 19.)

1 **BACKGROUND**

2 On December 13, 2013, counsel on behalf of defendants Holt and Austin filed a second  
3 motion for summary judgment, arguing that defendants are entitled to judgment as a matter of law  
4 with respect to plaintiff’s remaining claims that he received inadequate medical care while  
5 incarcerated at the Colusa County Jail. Plaintiff failed to file any opposition to that second  
6 motion for summary judgment. Accordingly, on January 27, 2014, the court issued an order  
7 requiring plaintiff to file his opposition to defendants’ motion for summary judgment, if any,  
8 within fourteen days. The court warned plaintiff that failure to file an opposition would be  
9 deemed as a statement of non-opposition to the pending motion and would result in this action  
10 being dismissed pursuant to Federal Rule of Civil Procedure 41(b). The fourteen-day period has  
11 now expired, and plaintiff still has still not filed an opposition or otherwise responded to the  
12 court’s order or defendants’ motion for summary judgment.

13 **DISCUSSION**

14 “Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss an  
15 action for failure to comply with any order of the court.” Ferdik v. Bonzelet, 963 F.2d 1258,  
16 1260 (9th Cir. 1992). In Ferdik, the Ninth Circuit Court of Appeals held that the district court did  
17 not abuse its discretion when it dismissed a pro se litigant’s civil rights action for failing to file an  
18 amended complaint. The court explained that, in deciding whether to dismiss a case for a  
19 litigant’s failure to comply with a court order, the district court must weigh five factors:

20 “(1) the public’s interest in expeditious resolution of litigation; (2)  
21 the court’s need to manage its docket; (3) the risk of prejudice to  
22 the defendants; (4) the public policy favoring disposition of cases  
on their merits; and (5) the availability of less drastic alternatives.”

23 Id. at 1260-61 (quoting Thompson v. Hous. Auth. of City of Los Angeles, 782 F.3d 829, 831 (9th  
24 Cir. 1986).

25 In this case, the first two factors as well as the fifth factor cited by the court in Ferdik  
26 strongly support dismissal of this action. This case has been pending since June 12, 2012, and  
27 has reached the summary judgment stage. Plaintiff’s failure to comply with court orders and the  
28 Local Rules strongly suggests that further time spent by the court on this case will consume

1 scarce judicial resources in addressing litigation which plaintiff has demonstrated he has no  
2 further intention to diligently pursue. The court specifically warned plaintiff in its January 27,  
3 2014, that it would dismiss this action pursuant to Federal Rule of Civil Procedure 41(b) if he  
4 failed to file an opposition to defendants' motion for summary judgment. Nevertheless, plaintiff  
5 has failed to file his opposition to defendant's motion. Under these circumstances, there is no  
6 suitable less drastic alternative to dismissal of this action.

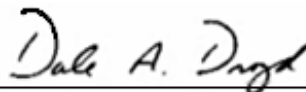
7 The third factor, the risk of prejudice to the defendants, also weighs in favor of dismissal.  
8 Plaintiff's failure to oppose defendants' motion for summary judgment prevents them from  
9 addressing plaintiff's claims on the merits and unnecessarily delays resolution of this action  
10 thereby forcing the defendants to incur additional time and expense.

11 Finally, the fourth factor, public policy favoring disposition of cases on the merits, weighs  
12 against dismissal of this action. However, for the reasons set forth above, the first, second, third,  
13 and fifth factors support dismissal. Under the circumstances of this case, those factors outweigh  
14 the general public policy favoring disposition of cases on their merits.

15 **CONCLUSION**

16 Accordingly, IT IS HEREBY ORDERED that this action is dismissed pursuant to Federal  
17 Rule of Civil Procedure 41(b).

18 Dated: March 4, 2014

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DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE

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