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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ADRIAN CIDA,  
Plaintiff,  
v.  
BONNIE LEE, M.D., et al.,  
Defendants.

No. 2:13-cv-2289 MCE KJN P

FINDINGS & RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. On November 20, 2017, defendants filed a motion for summary judgment. On January 10, 2018, plaintiff was granted an extension of time up to and including February 11, 2018, to file an opposition. Plaintiff did not file an opposition. On February 21, 2018, petitioner was granted an additional fourteen days in which to file an opposition, and warned that failure to oppose the motion would result in the dismissal of this action. (ECF No. 49.) On March 13, 2018, petitioner was granted until April 11, 2018, in which to file his opposition, noting that by then, petitioner would have had almost five months in which to prepare and file his opposition. (ECF No. 51 at 1.) Petitioner has again failed to file an opposition.

On January 20, 2017, 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.

1 1988). On November 20, 2017, defendants provided plaintiff with contemporaneous notice of  
2 such requirements. (ECF No. 44-3.)

3 On February 21, 2018, plaintiff was advised of the requirements for filing an opposition to  
4 the pending motion and that failure to oppose such a motion would be deemed as consent to have  
5 the: (a) pending motion granted; (b) action dismissed for lack of prosecution; and (c) action  
6 dismissed based on plaintiff's failure to comply with these rules and a court order. Plaintiff was  
7 also informed that failure to file an opposition would result in a recommendation that this action  
8 be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

9 The April 11, 2018 deadline has now expired and plaintiff has not responded to the court's  
10 order.

11 "Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss an  
12 action for failure to comply with any order of the court." Ferdik v. Bonzelet, 963 F.2d 1258,  
13 1260 (9th Cir. 1992). "In determining whether to dismiss a case for failure to comply with a  
14 court order the district court must weigh five factors including: '(1) the public's interest in  
15 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of  
16 prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits;  
17 and (5) the availability of less drastic alternatives.'" Ferdik, 963 F.2d at 1260-61 (quoting  
18 Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986)); see also Ghazali v. Moran, 46  
19 F.3d 52, 53 (9th Cir. 1995).

20 In determining to recommend that this action be dismissed, the court has considered the  
21 five factors set forth in Ferdik. Here, as in Ferdik, the first two factors strongly support dismissal  
22 of this action. The action has been pending for over four years and five months, and has reached  
23 the stage, set by the court's September 8, 2017 scheduling order, for resolution of dispositive  
24 motions and, if necessary, preparation for pretrial conference and jury trial. (ECF No. 43.)  
25 Plaintiff's failure to comply with the Local Rules and the court's multiple orders suggests that he  
26 has abandoned this action and that further time spent by the court thereon will consume scarce  
27 judicial resources in addressing litigation which plaintiff demonstrates no intention to pursue.

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1 Under the circumstances of this case, the third factor, prejudice to defendants from  
2 plaintiff's failure to oppose the motion, also favors dismissal. Plaintiff's failure to oppose the  
3 motion prevents defendants from addressing plaintiff's substantive opposition, and would delay  
4 resolution of this action, thereby causing defendants to incur additional time and expense.

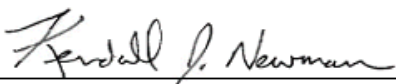
5 The fifth factor also favors dismissal. The court has advised plaintiff of the requirements  
6 under the Local Rules and granted ample additional time to oppose the pending motion, all to no  
7 avail. The court finds no suitable alternative to dismissal of this action.

8 The fourth factor, public policy favoring disposition of cases on their merits, weighs  
9 against dismissal of this action as a sanction. However, for the reasons set forth *supra*, the first,  
10 second, third, and fifth factors strongly support dismissal. Under the circumstances of this case,  
11 those factors outweigh the general public policy favoring disposition of cases on their merits. See  
12 Ferdik, 963 F.2d at 1263.

13 For the foregoing reasons, IT IS HEREBY RECOMMENDED that this action be  
14 dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(b).

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

23 Dated: May 1, 2018

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26 KENDALL J. NEWMAN  
27 UNITED STATES MAGISTRATE JUDGE

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