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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALICIA JACKSON,  
Plaintiff,  
v.  
SAN JOAQUIN COUNTY,  
Defendant.

No. 2:15-cv-0065 JAM CKD PS

ORDER and FINDINGS AND  
RECOMMENDATIONS

This case, in which plaintiff is proceeding pro se, is before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21). See 28 U.S.C. § 636(b)(1). On May 14, 2015, defendants filed a motion to dismiss. The motion was noticed to be heard on June 24, 2015.

On June 15, 2015, because plaintiff had not filed either an opposition or a statement of non-opposition to the motions, the undersigned continued the hearing on the motion to July 8, 2015 and directed plaintiff to file an opposition to the motion, or a statement of non-opposition thereto, no later than June 19, 2015. Plaintiff was advised that failure to file an opposition would be deemed a statement of non-opposition to the pending motion and would result in a recommendation that this action be dismissed.

Although the deadlines have now passed, the court docket reflects that plaintiff has not filed an opposition to the motion or a statement of non-opposition to the motion. The Federal

1 Rules of Civil Procedure provide for dismissal of actions based on lack of prosecution. Fed. R.  
2 Civ. P. 41(b). Pro se litigants are bound by the rules of procedure, even though pleadings are  
3 liberally construed in their favor. King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). In  
4 determining whether to dismiss for lack of prosecution, generally the court considers (1) the  
5 public's interest in expeditious resolution of litigation, (2) the court's need to manage its docket,  
6 (3) the risk of prejudice to the defendants, (4) the public policy favoring disposition of cases on  
7 their merits, and (5) the availability of less drastic sanctions. See, e.g., Al-Torki v. Kaempfen, 78  
8 F.3d 1381, 1384 (9th Cir. 1996). The court may dismiss a case sua sponte for lack of prosecution  
9 by the plaintiff. Hamilton Copper & Steel Corp. v. Primary Steel, Inc., 898 F.2d 1428 (9th Cir.  
10 1990). Sua sponte dismissal requires a "close focus" on consideration of "less drastic  
11 alternatives" and whether or not there has been a "warning of imminent dismissal of the case."  
12 Oliva v. Sullivan, 958 F.2d 272, 274 (9th Cir. 1992).

13 In determining that this action will be dismissed, the court has considered all the factors  
14 set forth in Al-Torki. The first two factors on their face favor the imposition of sanctions in this  
15 case brought by plaintiff and which has been proceeding forward since plaintiff initiated this  
16 action on January 9, 2015. See Wanderer v. Johnston, 910 F.2d 652, 656 (9th Cir. 1990).  
17 Regarding the third factor, defendants already have briefed their motion to dismiss, and would be  
18 prejudiced by the need for further litigation of this matter despite plaintiff's non-responsiveness.  
19 Moreover, delay itself generally is prejudicial--witness memories fade and evidence becomes  
20 stale or undiscoverable. While the fourth factor favors resolution on the merits, in this case  
21 plaintiff has declined to oppose the motion to dismiss and thus has precluded the court's  
22 evaluation of the potential merits of such an opposition.

23 Focusing on the fifth Al-Torki factor and warning regarding imminent dismissal, as  
24 required by Oliva, the court in its order of June 15, 2015 has advised plaintiff that this action is  
25 subject to dismissal, directed plaintiff to file opposition, and granted ample additional time to  
26 oppose the pending motion after plaintiff failed to timely oppose defendants' motion to dismiss,  
27 all to no avail. In light of plaintiff's failures, the court concludes there is no suitable alternative  
28 less drastic sanction to dismissal. The undersigned will therefore recommend that this action be

1 dismissed for failure to prosecute the action and for failure to comply with court orders and Local  
2 Rules. See Fed. R. Civ. P. 41(b); L.R. 110.

3 Accordingly, IT IS HEREBY ORDERED that the hearing date of July 8, 2015 on  
4 defendants' motion to dismiss is vacated; and

5 IT IS HEREBY RECOMMENDED that:

- 6 1. This action be dismissed with prejudice; and
- 7 2. The Clerk of Court be directed to close this case.

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

15 Dated: June 23, 2015

  
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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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