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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MAYNARD EDRALIN BUMAGAT,
Plaintiff,
v.
AMY FURLONG, et al.,
Defendants.

No. 2:17-cv-02008- TLN-GGH

FINDINGS AND RECOMMENDATIONS

INTRODUCTION

Plaintiff, proceeding pro se and in forma pauperis with this civil rights action filed his original complaint on September 28, 2017. ECF No. 1. He filed a First Amended Complaint on November 8, 2017, ECF No. 9. On November 15, 2017, defendants Amy Furlong, Krishna A. Abrams, and Solano County moved to dismiss the complaint for, *inter alia*, failing to serve the operative complaint, ECF No. 11. On December 27, 2017 this court served an Order continuing the schedule hearing on the Motion to Dismiss and ordering plaintiff to file an explanation why no opposition or statement of non-opposition was filed in conformity with this court’s Local Rule No. 230(c) and directing that one or the other be filed on or before January 4, 2018. ECF No. 19. Plaintiff responded to both directions on January 8, 2018, ECF Nos. 20, 21, and filed his own

1 Motion to Strike defenses raised by the non-moving defendants, ECF No. 22, and a motion to
2 amend the complaint. ECF No. 25.

3 After a hearing on all pending motions was held on January 18, 2017, the court took the
4 matters under submission, ECF No. 30. Insofar as plaintiff did not appear at the hearing the court
5 issued an Order to Show Cause directing plaintiff to explain his absence from the hearing, and
6 how he intended to address court orders and thereby avoid further delay and imposition upon both
7 defendants and the court. ECF No. 31. Plaintiff responded to the Order to Show Cause on
8 February 22, 2018, ECF No. 33, and the court set April 5, 2015 as a hearing date on the motions
9 to dismiss, to strike defenses and to amend. ECF No. 34. Plaintiff appeared for the hearing as did
10 defendants through counsel and the matters were submitted. ECF No. 38.

11 On April 11, 2018 the court issued an Order dismissing a parallel complaint plaintiff had
12 filed before another judge, granting the motion to dismiss for failure to serve, directing that the
13 Fourth Amended Complaint be re-served by the United States Marshal, and directing defendants
14 to modify their affirmative defenses in response to the newly served Fourth Amended Complaint.
15 ECF No. 39. Defendants answered the complaint on April 24, 2018, ECF No. 42, and plaintiff
16 replied to the answer on April 25, 2018. EC No. 43.

17 On June 25, 2018, County defendants filed a motion pertinent to the Fourth Amended
18 Complaint on grounds of failure to state a claim and various claims of immunity by the moving
19 parties defendant. ECF No. 46. The matter was set for hearing on the court's August 2, 2018 law
20 and motion calendar. *Id.* Once again, plaintiff failed either to oppose the motion or to file a
21 statement of non-opposition. On July 25, 2018, defendants filed a pleading commenting on
22 plaintiff's failure to act in response to the motion and suggesting that this failure conceded the
23 merits of the motion. ECF No. 48.

24 *DISCUSSION*

25 Almost a full year after the filing of the original complaint in this matter the litigation has
26 not progressed past the pleading stage despite orders to show cause issued by this court clearly
27 outlining plaintiff's obligations to the court and to the opposing parties. Although this court
28 understands the difficulties of litigating pro se, and affords opportunities to correct oversights,

1 this deference is not endless. In this case plaintiff has been repeatedly accorded this level of
2 deference as demonstrated by the chronology recited above. He nonetheless continues to ignore
3 court orders, resist direction given to him by the court, and instead draws this litigation out
4 endlessly with no apparent intent to move it toward resolution. In light thereof, this court will
5 recommend to the district court that the claims against the moving defendants be dismissed
6 without further leave to amend for failure to obey court orders and failure to prosecute. See
7 Federal Rule of Civil Procedure 41(b).

8 *CONCLUSION*

9 In light of the foregoing IT IS HEREBY RECOMMENDED that:

10 1. All claims against defendants Amy Furlong, Krishna A. Abrams and the County of
11 Solano shall Plaintiff's Fourth Amended Complaint should be dismissed without leave to amend
12 pursuant to Federal Rule of Civil Procedure 41(b).

13 2. The Clerk should remove the gavel from ECF No. 46.

14 **IT IS SO RECOMMENDED.**

15 These findings and recommendations are submitted to the United States District Judge
16 assigned to this case pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty days
17 after being served with these findings and recommendations any party may file written objections
18 with the court. The document should be captioned "Objections to Magistrate Judge's Findings
19 and Recommendations." Failure to file objections within the specified time may waive the right
20 to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21 Dated: August 29, 2018

22 /s/ Gregory G. Hollows

23 UNITED STATES MAGISTRATE JUDGE