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UNITED STATES DISTRICT COURT  
Northern District of California

XAVIER TAYLOR,

Plaintiff(s),

No. C 08-04406 MEJ

v.

**ORDER TO SHOW CAUSE**

CITY AND COUNTY OF SAN  
FRANCISCO,

Defendant(s).

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This matter is currently before the Court on a second Order to Show Cause. (Dkt. #58.) As Plaintiff Xavier Taylor has failed to respond to the order, and he has made no appearances in this case since a mediation session on October 8, 2009, the Court finds dismissal of the above-captioned matter with prejudice for the reasons set forth below.

On September 19, 2008, Defendant City and County of San Francisco and Matt Sullivan removed the above-captioned case to this Court. (Dkt. #1.) On May 21, 2009, the Court referred the case to court-sponsored mediation. (Dkt. #34.) However, despite repeated attempts by the ADR Department to conduct a phone conference, Plaintiff failed to provide a telephone number at which he could be reached. Based on this, and because Plaintiff had made no appearance in the case since a Case Management Conference before Judge Hamilton on May 14, 2009, the Court ordered Plaintiff to show cause why his case should not be dismissed for failure to prosecute and for failure to comply with the ADR Department's requests. (Dkt. #37.) The Court ordered Plaintiff to file a declaration by July 16, 2009, and scheduled a hearing on July 30, 2009.

On July 14, 2009, Plaintiff filed a response to the order to show cause, stating that he had not been available due to work commitments and a friend's passing. (Dkt. #39.) Based on Plaintiff's

1 response, the Court vacated the order to show cause. (Dkt. #40.)

2 On December 9, 2009, Defendants filed a letter requesting an order compelling Plaintiff to  
3 comply with his discovery obligations. (Dkt. #50.) In response, the Court ordered the parties to  
4 appear for an in-person meet and confer session in the undersigned's courtroom. (Dkt. #51.)  
5 Although Defendants' counsel appeared for the December 29, 2009 meet and confer session,  
6 Plaintiff failed to appear.

7 In the meantime, on December 17, 2009, Defendants filed a Motion for Summary Judgment,  
8 with a noticed hearing date of January 21, 2010. (Dkt. #52.) Pursuant to Civil Local Rule 7, any  
9 opposition to Defendant's motion was due by December 31, 2010. Plaintiff failed to file any  
10 opposition. Based on Plaintiff's failure to comply with the Court's discovery order and his failure to  
11 file an opposition to Defendants' motion, the Court vacated the summary judgment hearing date and  
12 issued a second order to show cause. (Dkt. #58.) The Court again ordered Plaintiff to show cause  
13 why this case should not be dismissed for failure to prosecute and comply with court deadlines. The  
14 Court ordered Plaintiff to file a declaration by January 21, 2010, and scheduled an order to show  
15 cause hearing on January 28, 2010.

16 On January 28, 2010, the Court held an order to show cause hearing. Plaintiff made no  
17 appearance at the hearing and failed to file a declaration. Based on this procedural history, the Court  
18 finds it appropriate to dismiss this case pursuant to Federal Rule of Civil Procedure 41(b). Under  
19 Rule 41(b), failure to comply with a court order can warrant dismissal. *See Ferdik v. Bonzelet*, 963  
20 F.2d 1258, 1260 (9th Cir. 1992). In "determining whether to dismiss a case for failure to comply  
21 with a court order, the district court must weigh five factors including '(1) the public's interest in  
22 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of  
23 prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and  
24 (5) the availability of less drastic alternatives.'" *Id.* at 1260-61 (quoting *Thompson v. Housing Auth.*,  
25 782 F.2d 829, 831 (9th Cir. 1986)). Here, Plaintiff has repeatedly failed to comply with his duty to  
26 prosecute his case. Specifically, he has failed to comply with ADR directives, failed to comply with  
27 his discovery obligations, failed to comply with a court order to appear for a meet and confer  
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1 session, failed to file an opposition to Defendants' pending summary judgment motion, failed to  
2 respond to the most recent order to show cause, failed to make an appearance at the osc hearing, and  
3 has made no appearance in this matter since a mediation on October 8, 2009. Thus, the Court finds  
4 that the *Ferdik* factors weigh in favor of dismissal.

5 Accordingly, the Court hereby DISMISSES this case WITH PREJUDICE for failure to  
6 prosecute. The Clerk of Court shall close the file. Defendants' summary judgment motion is moot.

7 **IT IS SO ORDERED.**

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9 Dated: January 28, 2010

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Maria-Elena James  
United States Magistrate Judge

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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

XAVIER TAYLOR,  
Plaintiff,

Case Number: 08-04406 MEJ

**CERTIFICATE OF SERVICE**

v.

CITY AND COUNTY OF SAN FRANCISCO,  
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 28, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Xavier Taylor  
131 Embarcadero West, #3326  
Oakland, CA 94607

Dated: January 28, 2010

Richard W. Wieking, Clerk  
By: Brenda Tolbert, Deputy Clerk