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UNITED STATES DISTRICT COURT
Northern District of California

HENRY KEMP,

Plaintiff(s),

No. C 10-1961 MEJ

v.

REGENTS OF THE UNIVERSITY OF
CALIFORNIA,

**ORDER FOR CLERK OF COURT TO
REASSIGN CASE**

REPORT & RECOMMENDATION

Defendant(s).
_____ /

On May 3, 2010, Plaintiff filed the above-captioned complaint, as well as an application to proceed in forma pauperis. On May 10, 2010, the Court ordered Plaintiff to either consent or decline magistrate jurisdiction by May 27, 2010. (Dkt. #4.) Because Plaintiff failed to comply with this deadline, the Court again ordered Plaintiff to consent or decline, with a new deadline of June 17, 2010. (Dkt. #5.) Plaintiff failed to respond. Based on Plaintiff's inaction, the Court ordered Plaintiff to show cause why this case should not be dismissed for failure to prosecute and comply with court deadlines. The Court ordered Plaintiff to file a declaration by July 8, 2010, and scheduled an order to show cause hearing on July 15, 2010. (Dkt. #6.)

On July 15, 2010, the Court held an order to show cause hearing. Plaintiff made no appearance at the hearing and failed to file a declaration. Based on this procedural history, the Court finds it appropriate to dismiss this case pursuant to Federal Rule of Civil Procedure 41(b). Under Rule 41(b), failure to comply with a court order can warrant dismissal. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992). In "determining whether to dismiss a case for failure to comply with a court order, the district court must weigh five factors including '(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and

UNITED STATES DISTRICT COURT
For the Northern District of California

1 (5) the availability of less drastic alternatives.” *Id.* at 1260-61 (quoting *Thompson v. Housing Auth.*,
2 782 F.2d 829, 831 (9th Cir. 1986)). Here, Plaintiff failed to comply with Court orders and deadlines,
3 failed to respond to the order to show cause, failed to make an appearance at the osc hearing, and has
4 made no appearance in this matter since filing the complaint. Thus, the Court finds that the *Ferdik*
5 factors weigh in favor of dismissal.

6 Accordingly, because Plaintiff has yet to consent to the undersigned's jurisdiction, the Court
7 hereby ORDERS the Clerk of Court to reassign this case to a district court judge. The undersigned
8 RECOMMENDS that the newly-assigned judge dismiss this case for failure to prosecute and failure
9 to comply with the Court's deadlines and orders.

10 Pursuant to Federal Rule of Civil Procedure 72, Plaintiff may serve and file objections to this
11 Report and Recommendation within 14 days after being served.

12 **IT IS SO ORDERED AND RECOMMENDED.**

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14 Dated: July 15, 2010

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17 Maria-Elena Jones
18 Chief United States Magistrate Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

HENRY KEMP,
Plaintiff,

Case Number: 10-01961 MEJ

CERTIFICATE OF SERVICE

v.

REGENTS OF THE UNIVERSITY OF
CALIFORNIA,
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 July 15, 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.

Henry Kemp
P.O. Box 14452
San Francisco, CA 94114

Dated: July 15, 2010

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