

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

TOM FRANKLIN,

No. C 12-06335 LB

Plaintiff,

**ORDER DENYING AS MOOT
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

v.

PHILIP KRAMER,

[Re: ECF No. 12]

Defendant.

On December 13, 2012, plaintiff Tom Franklin filed a complaint and an application to proceed *in forma pauperis* (“IFP application”). Complaint, ECF No. 1; IFP Application, ECF No. 3.¹ Mr. Franklin consented to the undersigned’s jurisdiction on January 4, 2013. Consent (Plaintiff), ECF No. 8. On January 8, 2013, the court denied without prejudice Mr. Franklin’s IFP application because it was incomplete and dismissed without prejudice his complaint because it was, at best, clearly insufficient, and at worst, frivolous. *See* 1/8/2013 Order, ECF No. 9. In its order, the court gave Mr. Franklin until February 7, 2013 to file a First Amended Complaint and to file another IFP application. *See id.* at 5.

Mr. Franklin did neither. Instead, on February 21, 2013, he filed a letter that was addressed to the Clerk of the Court that simply stated: “I have been having a problem with getting the defendant

¹ Citations are to the Electronic Case File (“ECF”) with pin cites to the electronic page number at the top of the document, not the pages at the bottom.

1 comply with the judge[']s order.” 2/21/2013 Letter, ECF No. 10. This letter, obviously, was not a
2 First Amended Complaint or an IFP application, and the letter also does not suggest that either of
3 these documents are going to be filed. Thus, on February 25, 2013, after considering the factors set
4 forth in *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992), the court concluded that four of
5 the five relevant factors weighed in favor of dismissal, dismissed without prejudice Mr. Franklin’s
6 action for failure to prosecute it, and directed the Clerk of the Court to close the file.

7 Later that day, the court received Mr. Franklin’s motion for summary judgment. Motion, ECF
8 No. 12. In it, Mr. Franklin asserts that: (1) the defendant, Philip Kramer, “failed to comply with
9 [the] judge’s order”; “all efforts to reach the defendant ha[ve] been futile”; (3) the court order[e]d
10 both plaintiff and defendant to participate and the defendant has refused”; and (4) “the defendant[]
11 failed to answer the court’s order of December 13, 2012,” which, presumably is the Order Setting
12 Initial Case Management Conference and ADR Deadlines. *Id.* at 1. Because, however, the court has
13 already dismissed this action without prejudice, the court **DENIES AS MOOT** Mr. Franklin’s
14 motion for summary judgment. And for the sake of clarity, the court also attaches to this order
15 copies of its two previous order, dated January 8, 2013 and February 25, 2013, respectively.

16 **IT IS SO ORDERED.**

17 Dated: February 28, 2013

18 
LAUREL BEELER
United States Magistrate Judge

19
20
21
22
23
24
25
26
27
28