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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JEFFREY E. WALKER,
Plaintiff,
v.
KROL, et al.,
Defendants.

Case No. [15-cv-05819-HSG](#)

**ORDER TO SHOW CAUSE WHY
ACTION SHOULD NOT BE DISMISSED
WITH PREJUDICE**

Plaintiff filed this *pro se* civil rights action under 42 U.S.C. § 1983, alleging that prison officials at San Francisco County Jail violated his constitutional rights. Now pending before the Court is Defendants’ motion to dismiss or, in the alternative, motion to compel deposition. Dkt. No. 30. The basis for Defendants’ motion to dismiss is Plaintiff’s repeated refusals to sit for his deposition. Defendants detail the following efforts to depose Plaintiff:

- On November 18, 2015, Defendants attempted to depose Plaintiff, but Plaintiff ended the deposition after twelve minutes, stating that he was “mentally impaired” due to medication. Dkt. No. 30-1 (“Ceballo Decl.”), ¶ 11.
- On December 7, 2015, defense counsel contacted Plaintiff on the telephone to reschedule his deposition, but Plaintiff refused to discuss setting a new date for his deposition, and abruptly ended the phone call. Ceballo Decl., ¶ 12.
- On March 23, 2017, Defendants attempted to depose Plaintiff, but Plaintiff refused to answer any questions related to the present lawsuit, claiming that he had not received notice of the deposition. Ceballo Decl., ¶ 17.

Plaintiff has not disputed Defendants’ description of their efforts to schedule his deposition. Because Plaintiff has refused to sit his deposition, Defendants have no evidence concerning the allegations set forth in Plaintiff’s complaint. Plaintiff has not filed an opposition to the motion, and the deadline to do so has since passed. Also, Plaintiff has not communicated with the Court since

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October 31, 2016. It appears from the record that Plaintiff is refusing to prosecute this case.¹ The Court further notes that this action has been pending since December 18, 2015. Dkt. No. 1.

The Court orders Plaintiff to show cause why the Court should not grant Defendants' motion to dismiss. **Within twenty-eight (28) days of the date of this order, Plaintiff shall file an opposition to Defendants' motion to dismiss.**

IT IS SO ORDERED.

Dated: 6/13/2017


HAYWOOD S. GILLIAM, JR.
United States District Judge

¹ Rule 41(b) of the Federal Rules of Civil Procedure provides that a defendant may move to dismiss an action with prejudice if the plaintiff fails to prosecute or to comply with the Federal Rules of Civil Procedure or a court order. Fed. R. Civ. P. 41(b).