

1 cognizable claims. *Id.* In lieu of filing an amended complaint, Carter filed an amended motion
2 for summary judgment. Amended Motion for Summary Judgment, Dkt 49. At a case
3 management conference held on October 15, 2010, Carter explained that the motion was
4 intended to serve as his amended complaint.²

5 Defendants moved to dismiss and Carter failed to file timely opposition.³ However,
6 Carter did appear at oral argument. He represented that his medical condition prevented him
7 from filing within the time allotted by the Civil Local Rules, and he indicated that he would be
8 able to provide supporting documentation. Subsequently, Carter submitted a letter from Dr.
9 Cecile Lee confirming that Carter is receiving treatment at the Department of Veterans Affairs
10 Outpatient Clinic (“VA Clinic”) in Oakland, California. Amended Briefing, Dkt. 59. The letter
11 indicated that Carter received treatment on February 3, 2011; February 18, 2011; and March 25,
12 2011, and would continue to receive treatment on a regular basis. *Id.*

13 However, nothing in Dr. Lee’s letter or Carter’s other submissions explains why Carter
14 was unable to file timely opposition to Defendants’ motion to dismiss. Carter obviously was not
15 receiving treatment on a daily basis, and it appears that he had ample time between visits either
16 to file opposition or to seek a continuance pending the resolution of his treatment. Accordingly,
17 the action will be dismissed without prejudice for lack of prosecution.

18 **ORDER**

19 IT IS HEREBY ORDERED that the instant case be DISMISSED WITHOUT
20 PREJUDICE for lack of prosecution. All scheduled dates in this matter are VACATED, and all
21 pending motions are TERMINATED.

22 **IT IS SO ORDERED.**

23 DATED: August 4, 2011

24 
25 JEREMY FOGEL
United States District Judge

26 _____
27 ² The motion thus is Carter’s operative pleading.

28 ³ Carter did file opposition papers after oral argument, but those papers did not explain
the delay. *See* Response to Motion to Dismiss, Dkt. 58.

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3 **IN THE UNITED STATES DISTRICT COURT**
4 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN JOSE DIVISION**

7 WILLIAM T. CARTER,

8 Plaintiff,

9 v.

10 DEPARTMENT OF CORRECTIONS-SANTA
11 CLARA COUNTY, *et al.*,

12 Defendants.
13
14

Case Number 5:09-cv-02413 JF (PSG)

CERTIFICATE OF SERVICE

15 I, the undersigned, hereby certify that I am an employee of the Office of the Clerk,
16 United States District Court, Northern District of California.

17 On August 5, 2011, I served a true and correct copy of the attached document to each of
18 the persons hereinafter listed by placing said copy in a postage paid envelope and depositing
19 said envelope in the United States mail, or by placing said envelope in the outgoing mail
20 delivery receptacle located in the Clerk's Office:

21 William Carter
22 6955 Foothill Blvd. #100
23 Oakland, CA 94605

24 DATED: August 5, 2011

For the Court
Richard W. Weiking, Clerk

25 By: _____/s/_____
26 Diana Munz
27 Courtroom Deputy Clerk
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