1		**E-Filed 8/5/2011**	
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7	IN THE UNITED STATES	DISTRICT COURT	
8	FOR THE NORTHERN DISTRICT OF CALIFORNIA		
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11	WILLIAM T. CARTER,	Case Number 5:09-cv-02413 JF (PSG)	
12	Plaintiff,	ORDER <sup>1</sup> DISMISSING CASE WITHOUT PREJUDICE FOR LACK	
13	v.	OF PROSECUTION	
14	DEPARTMENT OF CORRECTIONS-SANTA CLARA COUNTY, et al.,		
15	Defendants.		
16			
17	Plaintiff William Carter ("Carter"), a former	employee of the Santa Clara County	
18	Department of Corrections ("the County"), brought the instant action against the County, Chief		
19	Edward Flores, and Sheriff Laurie Smith (collectively, "Defendants"). Defendants terminated		

Carter in March 2007 after taking disciplinary action against him on at least two separate occasions. Subsequently, Carter asserted claims for violations of Title VII of the Civil Rights Act of 1964 ("Title VII"), the Americans with Disabilities Act ("ADA"), and related state laws. On July 6, 2010, the Court granted Defendants' motion for judgment on the pleadings, with leave to amend. Order Denying Plaintiff's Motion for Summary Judgment and Granting Defendants' Motion for Judgment on the Pleadings With Leave to Amend, Dkt. 46. In that order, the Court gave Carter explicit direction as to how he might amend his complaint to assert

<sup>1</sup>This disposition is not designated for publication in the official reports.

Case No. 5:09-cv-02413 JF (PSG) ORDER DISMISSING CASE WITHOUT PREJUDICE FOR LACK OF PROSECUTION (JFLC1)

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

5 Defendants moved to dismiss and Carter failed to file timely opposition.<sup>3</sup> However, Carter did appear at oral argument. He represented that his medical condition prevented him 6 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, 2011, and would continue to receive treatment on a regular basis. Id. 12

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

## **ORDER**

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

## IT IS SO ORDERED.

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DATED: August 4, 2011

JEREMY FOGEI United States District Judge

<sup>2</sup> The motion thus is Carter's operative pleading.

<sup>3</sup> 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		
6			
7	WILLIAM T. CARTER,	Case Number 5:09-cv-02413 JF (PSG)	
8	Plaintiff,	CERTIFICATE OF SERVICE	
9	v.		
10			
11	DEPARTMENT OF CORRECTIONS-SANTA CLARA COUNTY, et al.,		
12	Defendants.		
13			
14			
15	I, the undersigned, hereby certify that I am an employee of the Office of the Clerk, United States District Court, Northern District of California.		
16			
17	8 the persons hereinafter listed by placing said copy in a postage paid envelope and depositing said envelope in the United States mail, or by placing said envelope in the outgoing mail		
18			
19			
20	William Carter		
21	6955 Foothill Blvd. #100		
22	Oakland, CA 94605		
23	E ,	the Court hard W. Weiking, Clerk	
24		-	
25 25	Dia	na Munz	
26	Соц	urtroom Deputy Clerk	
27			
28			
	3 Case No. 5:09-cv-02413 JF (PSG) ORDER DISMISSING CASE WITHOUT PREJUDICE FOR LACK OF PROSECUTION (JFLC1)		