

1 September 3, 2010, against Defendants Julio Sandoval, San Diego County Sheriff's
2 Detective; Sheriff's Department of San Diego County; Carlos Vasquez, San Diego Sheriff's
3 Detective; Lenice Lopez, San Diego Sheriff's Detective; Las Colinas Women Detention
4 Facility; and the County of San Diego. (ECF No. 1). On September 23, 2010, Defendants
5 Sheriff's Department of San Diego County, Lenice Lopez, Las Colinas Women Detention
6 Facility, and County of San Diego filed an Answer and on September 28, 2010, Defendants
7 filed an Amended Answer. (ECF No. 6). On December 6, 2010, the Honorable United
8 States Magistrate Judge Barbara L. Major issued a Case Management Conference Order
9 Regulating Discovery and Other Pretrial Proceedings. (ECF No. 13).

10 On February 17, 2011, Plaintiffs filed a Request for Case Postponement to allow
11 Plaintiffs to travel to New York which was denied. (ECF No. 21). Defendants noticed the
12 depositions of both Plaintiffs and served Plaintiffs with Requests for Production of
13 Documents, Requests for Admission, and Special Interrogatories; however, Plaintiffs failed
14 to appear for their depositions and failed to respond to any of the written discovery. On
15 March 2, 1011, Defendants filed a Motion for Sanctions. (ECF No. 25). Plaintiffs filed an
16 untimely opposition and failed to appear to the motion hearing. (ECF No. 29).

17 On April 6, 2011, Magistrate Judge granted in part the Motion for Sanctions and
18 found that Plaintiffs "knowingly, voluntarily, and intentionally" failed to participate in
19 discovery. (ECF No. 31 at 4). The Magistrate Judge declined to recommend dismissal of
20 the matter but stated that "future failure to comply with a discovery obligation or a court
21 order may result in the dismissal of the case." *Id.* at 6. The Magistrate Judge ordered
22 Plaintiffs to pay \$1,122.50 to Defendants as sanctions for Plaintiffs' intentional discovery
23 violations. *Id.* at 7. The Magistrate Judge also ordered Plaintiffs to respond to written
24 discovery requests and to appear for their depositions.

25 Plaintiffs failed to pay the court-ordered sanctions, Plaintiffs failed to provide the
26 court-ordered written discovery, and Plaintiffs failed to appear for their depositions.
27 Defendants filed a second Motion for Sanctions requesting dismissal of the matter with
28 prejudice. (ECF No. 32). The Magistrate Judge issued a briefing schedule and ordered

1 Plaintiffs to file their opposition by May 20, 2011 and to appear for a hearing on June 7,
2 2011. (ECF No. 34). Plaintiffs failed to file an opposition and Plaintiffs failed to appear for
3 the hearing. (ECF No. 37).

4 On June 17, 2011, the Magistrate Judge issued a Report and Recommendation
5 recommending that this Court grant the Motion for Sanction (ECF No. 32) filed by
6 Defendants and dismiss this matter with prejudice pursuant to Fed. R. Civ. P. 37(b). The
7 Magistrate Judge set July 1, 2011 as the deadline for the filing of any objections to the
8 Report and Recommendation. Plaintiff have failed to file any objections.

9 DISCUSSION

10 The duties of the district court in connection with a magistrate judge's report and
11 recommendation are set forth in Rule 72 of the Federal Rules of Civil Procedure and 28
12 U.S.C. § 636(b)(1). The district court must "make a de novo determination of those
13 portions of the report ... to which objection is made," and "may accept, reject, or modify, in
14 whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C.
15 §636(b)(1); *see also United States v. Remsing*, 874 F.2d 614, 617 (9th Cir. 1989).

16 The Magistrate Judge correctly found that Fed. R. Civ. P. 37 provides: "If a party ...
17 fails to obey an order to provide or permit discovery... the court where the action is pending
18 may issue further just orders [including] ... dismissing the action or proceeding in whole or
19 in part..." Fed. R. Civ. P. 37(b)(v). The Magistrate Judge correctly considered the
20 following five factors to determine whether to dismiss the matter in its entirety: "(1) the
21 public's interest in expeditious resolution of litigation; (2) the court's need to manage its
22 dockets; (3) the risk of prejudice to the party seeking sanctions; (4) the public policy
23 favoring disposition of cases on their merits; and (5) the availability of less drastic
24 sanctions." *Computer Task Group, Inc. v. Brotby*, 364 F.3d 1112, 1115 (9th Cir. 2004)
25 (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

26 The Magistrate Judge correctly found that all of the factors, except for the forth
27 factor regarding public policy, "strongly favor dismissal of the case." (ECF No. 38 at 4).
28 The Magistrate Judge correctly concluded that "Plaintiffs' blatant disregard of their


1 discovery obligations and repeated refusals to comply with court orders mandate that
2 dismissal is both appropriate and the only remaining option.” *Id.* at 8.

3 After de novo review of the record and the submissions of the parties, the Court
4 finds that the Motion for Sanctions (ECF No. 32) filed by Defendants is GRANTED. This
5 matter is dismissed with prejudice pursuant to Fed. R. Civ. P. 37(b).

6 CONCLUSION

7 IT IS HEREBY ORDERED that the Court ADOPTS the Report and
8 Recommendation (ECF No. 38) in its entirety and the Motion for Sanctions (ECF No. 32)
9 filed by Defendants is GRANTED. The case is dismissed with prejudice.

10 DATED: July 25, 2011

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12 **WILLIAM Q. HAYES**
13 United States District Judge

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