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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DINH NGUY,

Plaintiff,

v.

COUNTY OF YOLO; SUPERIOR
COURT OF THE STATE OF
CALIFORNIA, IN AND FOR THE
COUNTY OF YOLO; DANIEL P.
McGUIRE; JEFF STONE; MARVIN C.
MARX; JOHN C. ORCUTT; WENDY A
TAYLOR; WILLIAM MARDER,

Defendants.

No. 2:14-cv-229-MCE-EFB PS

FINDINGS AND RECOMMENDATIONS

On September 9, 2014, in resolving defendants Maguire, Orcutt, and Taylor’s motions to dismiss, the court noted that the other defendants named in the complaint, County of Yolo, Yolo County Superior Court, Jeff Stone, Marvin Marx, and William Marder, have not appeared in this action and it appeared from the docket that these defendants had not been timely and properly served with process. Accordingly, plaintiff was directed to show cause, in writing, within fourteen days, why those defendants should not be dismissed for failure to effect service of process within the time prescribed by Rule 4(m) and/or for failure to comply with the Federal Rules of Civil Procedure and this court’s orders. ECF No. 43 at 15; *see* ECF No. 3; Fed. R. Civ. P. 4(m); *see also* Fed. R. Civ. P. 4 (l)(1) (requiring that proof of service be made to the court);

1 E.D. Cal. L. R. 210(b) (same); E.D. Cal. L.R. 110 (“Failure of counsel or of a party to comply
2 with these Rules or with any order of the Court may be grounds for imposition by the Court of
3 any and all sanctions authorized by statute or Rule or within the inherent power of the Court.”);
4 E.D. Cal. L.R. 183 (“Any individual representing himself or herself without an attorney is bound
5 by the Federal Rules of Civil or Criminal Procedure and by these Local Rules.”); *Ghazali v.*
6 *Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (“Failure to follow a district court’s local rules is a proper
7 ground for dismissal.”). Plaintiff was also admonished that failure to comply with the order could
8 result in a recommendation that these defendants and/or this action be dismissed for lack of
9 prosecution, for failure to follow this court’s orders and Local Rules, and/or failure to effect
10 service of process within the time prescribed by Rule 4(m). ECF No. 43 at 16.

11 The 14-day period has expired and plaintiff has failed to show cause or otherwise respond
12 to the court’s order. Therefore, this action should be dismissed for failure to prosecute and to
13 comply with court orders.¹ *See* Fed. R. Civ. P. 41(b); E.D. Cal. L.R. 110.

14 Accordingly, it is hereby RECOMMEND that:

- 15 1. This action be dismissed pursuant to Federal Rule of Civil Procedure 41(b), based on
16 plaintiffs’ failure to prosecute the action and to comply with court orders; and
- 17 2. The Clerk be directed to close this case.

18 These findings and recommendations are submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
20 after being served with these findings and recommendations, any party may file written
21 objections with the court and serve a copy on all parties. Such a document should be captioned
22 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections

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26 ¹ Plaintiff was also ordered to show cause why sanctions should not be imposed for his
27 failure to appear at the June 11, 2014 hearing on defendants Maguire, Orcutt, and Taylor’s
28 motions to dismiss. ECF No. 43 at 16-17. In light of the recommendation that this action be
dismissed for failure to prosecute, no sanctions will be imposed for plaintiff’s failure to appear at
the June 11, 2014 hearing.

1 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
2 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: October 16, 2014.

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5 EDMUND F. BRENNAN
6 UNITED STATES MAGISTRATE JUDGE
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