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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CONNIE HILL,  
  
  Plaintiff,  
  
  v.  
  
PAT MCCRORY, et al.,  
  
  Defendants.

No. 2:15-cv-2017-GEB-KJN PS

FINDINGS AND RECOMMENDATIONS

Plaintiff Connie Hill, proceeding without counsel, commenced this action on September 24, 2015, and paid the filing fee. (ECF No. 1.) That same day, the court issued an “Order Setting Status Conference.” (ECF No. 3.) The order directed plaintiff to “complete service of process on defendants named in the complaint within 120 days from the date of this order. Plaintiff is cautioned that this action may be dismissed if service of process is not accomplished within 120 days from the date that the complaint is filed. See Fed. R. Civ. P. 4(m).” (Id. at 1.)

That same order set a status (pre-trial scheduling) conference for January 28, 2016, at 10:00 a.m., and stated that “[a]ll parties shall appear by counsel or in person if acting without counsel.” (ECF No. 3 at 2.) The order also directed the parties to file a status report addressing specific topics no later than seven (7) days prior to the status conference. (Id. at 2-3.) The order specifically cautioned that “[f]ailing to obey federal or local rules, or [an] order of this court, may

1 result in dismissal of this action. This court will construe pro se pleadings liberally, but pro se  
2 litigants must comply with the procedural rules.” (Id. at 3.)

3 No status report was filed prior to the status conference, and plaintiff also failed to appear  
4 at the status conference as ordered. Additionally, no defendant has yet appeared in this case, and  
5 there has been no docket activity by plaintiff since the complaint was filed. Such inactivity  
6 strongly suggests that plaintiff has not yet served defendants with process, even though the 120-  
7 day period for service of process has now expired.

8 Based on plaintiff’s numerous failures, the court considered whether the action should be  
9 dismissed. Nevertheless, in light of plaintiff’s *pro se* status and the court’s general preference to  
10 resolve actions on their merits, the court first attempted lesser sanctions in the form of an order to  
11 show cause and monetary sanctions. More specifically, on January 29, 2016, the court ordered  
12 plaintiff, based on plaintiff’s failure to comply with the court’s prior orders, failure to appear at  
13 the status conference, and failure to prosecute the case, to: (1) pay the Clerk of Court \$250.00 in  
14 monetary sanctions; and (2) show cause in writing why the action should not be dismissed  
15 pursuant to Federal Rule of Civil Procedure 41(b) no later than 14 days from the date of that  
16 order. (ECF No. 5.) Plaintiff was specifically cautioned that failure to timely comply with the  
17 order would result in a recommendation that the action be dismissed with prejudice pursuant to  
18 Federal Rule of Civil Procedure 41(b). (Id.)

19 Although the applicable deadline has now passed, plaintiff failed to pay the monetary  
20 sanctions and failed to respond to the order to show cause. Therefore, the court recommends  
21 dismissal at this juncture.

22 Eastern District Local Rule 110 provides that “[f]ailure of counsel or of a party to comply  
23 with these Rules or with any order of the Court may be grounds for imposition by the Court of  
24 any and all sanctions authorized by statute or Rule or within the inherent power of the Court.”  
25 Moreover, Eastern District Local Rule 183(a) provides, in part:

26 Any individual representing himself or herself without an attorney  
27 is bound by the Federal Rules of Civil or Criminal Procedure, these  
28 Rules, and all other applicable law. All obligations placed on  
“counsel” by these Rules apply to individuals appearing in propria  
persona. Failure to comply therewith may be ground for dismissal,

1 judgment by default, or any other sanction appropriate under these  
2 Rules.

3 See also King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) (“Pro se litigants must follow the  
4 same rules of procedure that govern other litigants”) (overruled on other grounds). A district  
5 court may impose sanctions, including involuntary dismissal of a plaintiff’s case pursuant to  
6 Federal Rule of Civil Procedure 41(b), where that plaintiff fails to prosecute his or her case or  
7 fails to comply with the court’s orders, the Federal Rules of Civil Procedure, or the court’s local  
8 rules. See Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991) (recognizing that a court “may act  
9 sua sponte to dismiss a suit for failure to prosecute”); Hells Canyon Preservation Council v. U.S.  
10 Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005) (stating that courts may dismiss an action  
11 pursuant to Federal Rule of Civil Procedure 41(b) sua sponte for a plaintiff’s failure to prosecute  
12 or comply with the rules of civil procedure or the court’s orders); Ghazali v. Moran, 46 F.3d 52,  
13 53 (9th Cir. 1995) (per curiam) (“Failure to follow a district court’s local rules is a proper ground  
14 for dismissal”); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992) (“Pursuant to Federal  
15 Rule of Civil Procedure 41(b), the district court may dismiss an action for failure to comply with  
16 any order of the court”); Thompson v. Housing Auth. of City of L.A., 782 F.2d 829, 831 (9th Cir.  
17 1986) (per curiam) (stating that district courts have inherent power to control their dockets and  
18 may impose sanctions including dismissal or default).

19 A court must weigh five factors in determining whether to dismiss a case for failure to  
20 prosecute, failure to comply with a court order, or failure to comply with a district court’s local  
21 rules. See, e.g., Ferdik, 963 F.2d at 1260. Specifically, the court must consider:

- 22 (1) the public’s interest in expeditious resolution of litigation; (2)  
23 the court’s need to manage its docket; (3) the risk of prejudice to  
24 the defendants; (4) the public policy favoring disposition of cases  
on their merits; and (5) the availability of less drastic alternatives.

25 Id. at 1260-61; accord Pagtalunan v. Galaza, 291 F.3d 639, 642-43 (9th Cir. 2002); Ghazali, 46  
26 F.3d at 53. The Ninth Circuit Court of Appeals has stated that “[t]hese factors are not a series of  
27 conditions precedent before the judge can do anything, but a way for a district judge to think  
28 about what to do.” In re Phenylpropanolamine (PPA) Prods. Liab. Litig., 460 F.3d 1217, 1226

1 (9th Cir. 2006).

2 Although involuntary dismissal can be a harsh remedy, on balance the five relevant  
3 factors weigh in favor of dismissal here. The first two Ferdik factors strongly support dismissal,  
4 given that plaintiff's failure to comply with the court's orders and failure to prosecute her case  
5 have unreasonably delayed the progress of this litigation. The third Ferdik factor also favors  
6 dismissal. Although the defendants have not yet appeared in the case, they have been named in a  
7 civil action, and plaintiff's failure to prosecute the case has hampered defendants' ability to move  
8 this case forward towards resolution.

9 Additionally, the fifth Ferdik factor, which considers the availability of less drastic  
10 measures, also supports dismissal. As noted above, the court has already attempted less drastic  
11 sanctions – monetary sanctions and the issuance of an order to show cause – prior to  
12 recommending dismissal. However, plaintiff ultimately failed to pay the sanctions and failed to  
13 respond to the order to show cause. Furthermore, the court finds no suitable alternative to  
14 dismissal at this juncture. Given plaintiff's complete failure to respond to the court's prior orders  
15 and instructions, the imposition of further monetary sanctions would be futile, and the court is  
16 unable to frame any meaningful issue or evidentiary sanctions based on the limited record before  
17 it.

18 Finally, the court finds that the fourth Ferdik factor, which addresses the public policy  
19 favoring disposition of cases on the merits, does not materially counsel against dismissal. If  
20 anything, a disposition on the merits has been hindered by plaintiff's own failure to comply with  
21 the court's orders and prosecute her case. In any event, the court finds that the fourth Ferdik  
22 factor is outweighed by the other Ferdik factors.

23 Consequently, dismissal is appropriate.

24 Accordingly, IT IS HEREBY RECOMMENDED that:


- 25 1. The action be dismissed with prejudice pursuant to Federal Rule of Civil Procedure  
26 41(b).
- 27 2. The Clerk of Court be directed to vacate all dates and close this case.

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1           These findings and recommendations are submitted to the United States District Judge  
2 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)  
3 days after being served with these findings and recommendations, any party may file written  
4 objections with the court and serve a copy on all parties. Such a document should be captioned  
5 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections  
6 shall be served on all parties and filed with the court within fourteen (14) days after service of the  
7 objections. The parties are advised that failure to file objections within the specified time may  
8 waive the right to appeal the District Court’s order. Turner v. Duncan, 158 F.3d 449, 455 (9th  
9 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

10           IT IS SO RECOMMENDED.

11 Dated: February 29, 2016

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14 KENDALL J. NEWMAN  
15 UNITED STATES MAGISTRATE JUDGE  
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