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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARON MICHAEL OLIVER,
Plaintiff,
v.
MICHAEL L. RAMSEY et al.,
Defendants.

No. 2:19-cv-01782-KJM-KJN

FINDINGS AND RECOMMENDATIONS

Plaintiff Daron Oliver, proceeding without counsel, commenced this action on September 9, 2019. (ECF No. 1.)¹ On October 12, 2016, the court granted plaintiff’s amended motion to proceed in forma pauperis and dismissed his complaint with leave to amend. (ECF No. 3.) Plaintiff was given 28 days to file either an amended complaint or a notice of voluntary dismissal of the action. (Id.) Additionally, plaintiff was expressly cautioned that failure to file either an amended complaint or a notice of voluntary dismissal by the required deadline may result in dismissal of the action with prejudice pursuant to Federal Rule of Civil Procedure 41(b). (Id.)

Although that deadline has now long passed, plaintiff has failed to file a first amended complaint or notice of voluntary dismissal. Therefore, at this juncture, the court finds that dismissal of the action is appropriate.

¹ This action proceeds before the undersigned pursuant to Local Rule 302(c)(21).

1 Eastern District Local Rule 110 provides that “[f]ailure 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 Moreover, Eastern District Local Rule 183(a) provides, in part:

5 Any individual representing himself or herself without an attorney is bound by the
6 Federal Rules of Civil or Criminal Procedure, these Rules, and all other applicable
7 law. All obligations placed on “counsel” by these Rules apply to individuals
8 appearing in propria persona. Failure to comply therewith may be ground for
9 dismissal, judgment by default, or any other sanction appropriate under these Rules.

10 See also King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) (“Pro se litigants must follow the
11 same rules of procedure that govern other litigants”) (overruled on other grounds). A district
12 court may impose sanctions, including involuntary dismissal of a plaintiff’s case pursuant to
13 Federal Rule of Civil Procedure 41(b), where that plaintiff fails to prosecute his or her case or
14 fails to comply with the court’s orders, the Federal Rules of Civil Procedure, or the court’s local
15 rules. See Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991) (recognizing that a court “may act
16 sua sponte to dismiss a suit for failure to prosecute”); Hells Canyon Preservation Council v. U.S.
17 Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005) (stating that courts may dismiss an action
18 pursuant to Federal Rule of Civil Procedure 41(b) sua sponte for a plaintiff’s failure to prosecute
19 or comply with the rules of civil procedure or the court’s orders); Ghazali v. Moran, 46 F.3d 52,
20 53 (9th Cir. 1995) (per curiam) (“Failure to follow a district court’s local rules is a proper ground
21 for dismissal”); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992) (“Pursuant to Federal
22 Rule of Civil Procedure 41(b), the district court may dismiss an action for failure to comply with
23 any order of the court”); Thompson v. Housing Auth. of City of L.A., 782 F.2d 829, 831 (9th Cir.
24 1986) (per curiam) (stating that district courts have inherent power to control their dockets and
25 may impose sanctions including dismissal or default).

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

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

4 Id. at 1260-61; accord Pagtalunan v. Galaza, 291 F.3d 639, 642-43 (9th Cir. 2002); Ghazali, 46
5 F.3d at 53. The Ninth Circuit Court of Appeals has stated that “[t]hese factors are not a series of
6 conditions precedent before the judge can do anything, but a way for a district judge to think
7 about what to do.” In re Phenylpropanolamine (PPA) Prods. Liab. Litig., 460 F.3d 1217, 1226
8 (9th Cir. 2006).

9 Here, the first two Ferdik factors strongly support dismissal. Plaintiff’s failure to comply
10 with the court’s orders and deadlines suggests that plaintiff is not interested in seriously
11 prosecuting the action and does not take his obligations to the court and defendants seriously.
12 Therefore, any further time spent by the court on this case will consume scarce judicial resources
13 and take away from other active cases.

14 The third Ferdik factor, prejudice to a defendant, also slightly favors dismissal. To be
15 sure, defendants have not yet appeared in the action, but plaintiff’s unreasonable delay in
16 prosecuting this action cannot be said to be without consequences. With the passage of time,
17 evidence becomes stale and/or unavailable, making it more difficult to assess a case and mount a
18 potentially viable defense.

19 The fifth Ferdik factor, which considers the availability of less drastic measures, also
20 supports dismissal of this action. The court has ordered plaintiff to file an amended complaint
21 and he has entirely failed to do so. At this juncture, the court finds no suitable alternative to
22 recommending dismissal of the action.

23 The court recognizes the importance of giving due weight to the fourth Ferdik factor,
24 which addresses the public policy favoring disposition of cases on the merits. However, the
25 fourth Ferdik factor is outweighed by the other Ferdik factors. Indeed, it is plaintiff’s own failure
26 to comply with court orders that precludes a disposition on the merits.

27 Therefore, after carefully evaluating and weighing the Ferdik factors, the court concludes
28 that dismissal is appropriate.

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Accordingly, IT IS HEREBY RECOMMENDED that:


1. The action be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(b).
2. The Clerk of Court be directed to close this case.

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

IT IS SO RECOMMENDED.

Dated: December 23, 2019

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE