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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CEDRIC ANTHONY BRADEN,
Plaintiff,
v.
LOS ANGELES POLICE
DEPARTMENT, et al.,
Defendants.

Case No. CV 16-7633 JVS(JC)
MEMORANDUM OPINION AND
ORDER DISMISSING ACTION

I. BACKGROUND AND SUMMARY

On October 13, 2016, Cedric Anthony Braden ("plaintiff"), who is at liberty, is proceeding without a lawyer (*i.e.*, "*pro se*"), and has been granted leave to proceed in forma pauperis, filed a Civil Rights Complaint ("Complaint") pursuant to 42 U.S.C. § 1983 against the Los Angeles Police Department ("LAPD") and eight LAPD officers ("Officer Defendants"). (Complaint at 1-5, 8). The Complaint, construed liberally, essentially alleges that on September 6, 2011, the Officer Defendants assaulted plaintiff as he was "standing next to his parked van" and "falsely arrest[ed] him for possession/sales of cocaine" in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and

1 provisions of the California Constitution, and that the LAPD failed properly to
2 train the Officer Defendants and was responsible for their use of excessive force.
3 (Complaint at 5-8). Plaintiff sues the Officer Defendants in their individual and
4 official capacities, and seeks monetary relief from all defendants.

5 On January 9, 2017, this Court screened the Complaint, notified plaintiff of
6 multiple deficiencies therein, and dismissed multiple claims (“Dismissed Claims”)
7 in the Complaint with leave to amend (“Dismissal Order”). (Docket No. 7). The
8 Court granted plaintiff leave to file a First Amended Complaint within fourteen
9 (14) days, *i.e.*, by January 23, 2017, to the extent plaintiff wished to proceed with
10 the Dismissed Claims and was able to cure the deficiencies therein which were
11 identified in the Dismissal Order. (Docket No. 7 at 11). The Dismissal Order
12 further directed plaintiff, in the event he elected not to file a First Amended
13 Complaint and to proceed solely on the one remaining claim – a Fourth
14 Amendment excessive force claim against the Officer Defendants in their
15 individual capacities (“Remaining Claim”) – to file either a Notice of Intent to
16 Proceed Solely on Remaining Claim or a signed Notice of Dismissal dismissing all
17 claims except the Remaining Claim. (Docket No. 7 at 12; Docket No. 7-1). The
18 Dismissal Order also provided the following warning:

19 **Plaintiff is cautioned that, absent further order of the**
20 **Court, plaintiff’s failure timely to file a First Amended**
21 **Complaint, a Notice of Intent to Proceed Solely on Remaining**
22 **Claim or a signed version of the attached Notice of Dismissal**
23 **[dismissing all claims except the Remaining Claim] may result in**
24 **the dismissal of this action with or without prejudice based upon**
25 **plaintiff’s failure to comply with [the Dismissal] Order and/or**
26 **plaintiff’s failure diligently to prosecute.**

27 (Docket No. 7 at 12) (emphasis in original).

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1 Although the deadline to do so expired more than two weeks ago, plaintiff
2 has not filed a First Amended Complaint, a Notice of Intent to Proceed Solely on
3 Remaining Claim, or a Notice of Dismissal and has not requested an extension of
4 time to do so.

5 **II. DISCUSSION**

6 Based upon the record and the applicable law, and as further discussed
7 below, the Court dismisses this action without prejudice due to plaintiff’s failure to
8 comply with the Dismissal Order, and his failure diligently to prosecute.

9 It is well-established that a district court may *sua sponte* dismiss an action
10 where a plaintiff has failed to comply with a court order and/or unreasonably failed
11 to prosecute. See Link v. Wabash Railroad Co., 370 U.S. 626, 629-33 (1962);
12 Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir.) (as amended), cert. denied, 506
13 U.S. 915 (1992); see also McKeever v. Block, 932 F.2d 795, 797 (9th Cir. 1991)
14 (district court may *sua sponte* dismiss action “only for an unreasonable failure to
15 prosecute”) (citations omitted); Cf. Edwards v. Marin Park, Inc., 356 F.3d 1058,
16 1065 (9th Cir. 2004) (*sua sponte* dismissal pursuant to Fed. R. Civ. P. 41(b) proper
17 sanction in cases where a plaintiff is notified of deficiencies in complaint and is
18 given “the opportunity to amend [the complaint] or be dismissed” but the plaintiff
19 “[does] *nothing*”) (citations omitted; emphasis in original).

20 In determining whether to dismiss an action for failure to prosecute or
21 failure to comply with court orders, a district court must consider several factors,
22 namely (1) the public’s interest in expeditious resolution of litigation; (2) the
23 court’s need to manage its docket; (3) the risk of prejudice to the defendant;
24 (4) the public policy favoring disposition of cases on their merits; and (5) the
25 availability of less drastic alternatives. See In re Eisen, 31 F.3d 1447, 1451 (9th
26 Cir. 1994) (failure to prosecute); Ferdik, 963 F.2d at 1260-61 (failure to comply
27 with court orders). Dismissal is appropriate “where at least four factors support
28 dismissal . . . or where at least three factors ‘strongly’ support dismissal.”

1 Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998) (citations
2 omitted).¹ Here, as at least the first three factors strongly support dismissal, the
3 Court finds that plaintiff's unreasonable failure to prosecute his case and failure to
4 comply with the Dismissal Order warrant dismissal.

5 **III. ORDER**

6 IT IS THEREFORE ORDERED that this action is dismissed without
7 prejudice and that the Clerk enter judgment accordingly.

8 IT IS SO ORDERED.

9 DATED: February 8, 2017



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11 HONORABLE JAMES V. SELNA
12 UNITED STATES DISTRICT JUDGE
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23 ¹Where a plaintiff is proceeding *pro se*, a court must first notify the plaintiff of the
24 deficiencies in a complaint so that the plaintiff has an opportunity "to amend effectively."
25 Ferdik, 963 F.2d at 1261 (citation omitted). A district judge may not dismiss an action for
26 failure to comply with a court order (*e.g.*, the Dismissal Order) or for unreasonable failure to
27 prosecute if the initial decision to dismiss a complaint was erroneous. Yourish v. California
28 Amplifier, 191 F.3d 983, 992 (9th Cir. 1999) (citing *id.*). Here, as noted above, plaintiff has
been notified of the deficiencies in the Dismissed Claims and has been afforded the opportunity
to amend effectively or, alternatively, to notify the Court that he does not wish to amend the
Dismissed Claims and instead wishes to proceed solely on the Remaining Claim. The Court's
Dismissal Order was not erroneous.