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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 GEOFFREY FITZGERALD WILSON,
11 Plaintiff,
12 v.
13 TANNAZ H. AZINKHAN, Ph.D., et al.,
14 Defendants.
15

Case No. CV 16-8092 JVS(JC)

MEMORANDUM OPINION AND
ORDER DISMISSING ACTION

16
17 **I. BACKGROUND AND SUMMARY**

18 On October 31, 2016, plaintiff Geoffrey Fitzgerald Wilson, who is at liberty,
19 is proceeding *pro se*, and has been granted leave to proceed *in forma pauperis*,
20 filed a Civil Rights Complaint (“Original Complaint”) pursuant to 42 U.S.C.
21 § 1983 against multiple defendants. On July 25, 2017, this Court screened the
22 Original Complaint, notified plaintiff of multiple deficiencies therein, and
23 dismissed the Original Complaint with leave to amend (“July Order”).

24 On September 7, 2017, plaintiff filed a First Amended Complaint. On
25 November 20, 2017, this Court screened the First Amended Complaint, notified
26 plaintiff of multiple deficiencies therein, dismissed the First Amended Complaint
27 with leave to amend and directed plaintiff, within fourteen (14) days, to file a
28 Second Amended Complaint or a signed Notice of Dismissal (“November Order”).

1 The November Order further expressly cautioned plaintiff in bold-faced print that
2 the failure timely to file a Second Amended Complaint or a Notice of Dismissal
3 may be deemed plaintiff's admission that amendment is futile and may result in the
4 dismissal of this action, with or without prejudice, on the grounds set forth in the
5 November Order, on the ground that amendment is futile, for failure diligently to
6 prosecute, and/or for failure to comply with the November Order.

7 As the foregoing deadline expired without the filing of a Second Amended
8 Complaint or a Notice of Dismissal, the assigned United States Magistrate Judge
9 issued an Order to Show Cause Re Dismissal ("Order to Show Cause") on
10 December 20, 2017, directing plaintiff to show cause in writing, on or before
11 December 27, 2017, why plaintiff's failure timely to file a Second Amended
12 Complaint or a Notice of Dismissal should not be deemed plaintiff's admission that
13 amendment is futile, and why this action should not be dismissed on the grounds
14 set forth in the November Order, on the ground that amendment is futile, based
15 upon plaintiff's failure to prosecute, and/or based upon plaintiff's failure to comply
16 with the November Order. The Order to Show Cause further expressly cautioned
17 plaintiff in bold-faced print that failure to comply with the Order to Show Cause
18 and/or to show good cause, may be deemed plaintiff's admission that amendment
19 is futile and may result in the dismissal of this action on the ground that
20 amendment is futile, on the grounds set forth in the November Order, based upon
21 plaintiff's failure to prosecute this action, and/or based upon plaintiff's failure to
22 comply with the Court's orders.

23 **II. DISCUSSION**

24 Based upon the record and the applicable law, and as further discussed
25 below, the Court dismisses this action due to plaintiff's failure to state a claim
26 upon which relief can be granted, his failure to comply with the November Order
27 and the Order to Show Cause and his failure diligently to prosecute.

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1 First, as explained in detail in the November Order, the First Amended
2 Complaint failed to state a claim upon which relief may be granted. The
3 November Order explained in detail what plaintiff needed to do to cure the
4 deficiencies in his pleading, granted plaintiff ample leave to file a Second
5 Amended Complaint to the extent he was able to cure the multiple pleading
6 deficiencies identified, and warned plaintiff that the action would be dismissed if
7 he failed timely to file such an amendment. Since plaintiff did not file a Second
8 Amended Complaint despite having been given an opportunity to do so, and did
9 not respond to the Order to Show Cause, the Court can only conclude that plaintiff
10 is simply unable or unwilling to draft a complaint that states viable claims for relief
11 and deems such failure an admission that amendment is futile. See, e.g., Knapp v.
12 Hogan, 738 F.3d 1106, 1110 (9th Cir. 2013) (“When a litigant knowingly and
13 repeatedly refuses to conform his pleadings to the requirements of the Federal
14 Rules, it is reasonable to conclude that the litigant simply *cannot* state a claim.”)
15 (emphasis in original), cert. denied, 135 S. Ct. 57 (2014). Accordingly, dismissal
16 of the instant action based upon plaintiff’s failure to state a claim is appropriate.

17 Second, dismissal is appropriate based upon plaintiff’s failure to comply
18 with the November Order and the Order to Show Cause, and the failure diligently
19 to prosecute. It is well-established that a district court may *sua sponte* dismiss an
20 action where a plaintiff has failed to comply with a court order and/or
21 unreasonably failed to prosecute. See Link v. Wabash Railroad Co., 370 U.S. 626,
22 629-33 (1962); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir.) (as amended),
23 cert. denied, 506 U.S. 915 (1992); see also McKeever v. Block, 932 F.2d 795, 797
24 (9th Cir. 1991) (district court may *sua sponte* dismiss action “only for an
25 unreasonable failure to prosecute”) (citations omitted); see also Edwards v. Marin
26 Park, Inc., 356 F.3d 1058, 1065 (9th Cir. 2004) (*sua sponte* dismissal pursuant to
27 Fed. R. Civ. P. 41(b) proper sanction in cases where a plaintiff is notified of
28 deficiencies in complaint and is given “the opportunity to amend [the complaint] or

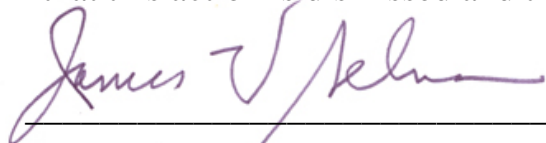
1 be dismissed” but the plaintiff “[does] *nothing*”) (citations omitted; emphasis in
2 original).

3 In determining whether to dismiss an action for failure to prosecute or
4 failure to comply with court orders, a district court must consider several factors,
5 namely (1) the public’s interest in expeditious resolution of litigation; (2) the
6 court’s need to manage its docket; (3) the risk of prejudice to the defendant;
7 (4) the public policy favoring disposition of cases on their merits; and (5) the
8 availability of less drastic alternatives. See In re Eisen, 31 F.3d 1447, 1451 (9th
9 Cir. 1994) (failure to prosecute); Ferdik, 963 F.2d at 1260-61 (failure to comply
10 with court orders). Dismissal is appropriate “where at least four factors support
11 dismissal . . . or where at least three factors ‘strongly’ support dismissal.”
12 Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998) (citations
13 omitted).¹ Here, as at least the first three factors strongly support dismissal, the
14 Court finds that plaintiff’s unreasonable failure to prosecute his case and failure to
15 comply with the November Order and the Order to Show Cause warrant dismissal.

16 **III. ORDER**

17 IT IS THEREFORE ORDERED that this action is dismissed and that the
18 Clerk enter judgment accordingly.

19 DATED: January 23, 2018



20 HONORABLE JAMES V. SELNA
21 UNITED STATES DISTRICT JUDGE

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24 ¹Where a plaintiff is proceeding *pro se*, a court must first notify the plaintiff of the
25 deficiencies in the complaint so that the plaintiff has an opportunity “to amend effectively.”
26 Ferdik, 963 F.2d at 1261 (citation omitted). A district judge may not dismiss an action for
27 failure to comply with a court order or for unreasonable failure to prosecute if the initial decision
28 to dismiss a complaint was erroneous. Yourish v. California Amplifier, 191 F.3d 983, 992 (9th
Cir. 1999) (citing id.). Here, as noted above, plaintiff was notified of the deficiencies in the
Original Complaint and the First Amended Complaint and afforded the opportunity to amend
effectively. Further, the Court’s July and November Orders were not erroneous.