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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CHAUNCEY HOLLIS,

Plaintiff,

v.

CALIFORNIA MEN’S COLONY
CORRECTIONAL OFFICERS
AYALA, et al.,

Defendants.

Case No. CV 18-993 DMG(JC)

MEMORANDUM OPINION AND
ORDER DISMISSING ACTION

I. BACKGROUND AND SUMMARY

On February 6, 2018, plaintiff Chauncey Hollis, a prisoner who is proceeding *pro se* and has been granted leave to proceed without prepayment of the filing fee, formally filed a Civil Rights Complaint pursuant to 42 U.S.C. § 1983 (“Section 1983”) which appeared to name as defendants the warden and unspecified other individuals connected with the California Men’s Colony (“CMC”) where plaintiff was then housed.

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1 On February 26, 2018, plaintiff formally filed a First Amended Civil Rights
2 Complaint (“First Amended Complaint”) pursuant to Section 1983, suing nine
3 CMC officials, in their individual and official capacities, and seeking declaratory,
4 injunctive, and monetary relief. On June 15, 2018, the Court screened and
5 dismissed the First Amended Complaint pursuant to Title 28, United States Code
6 sections 1915(e)(2)(B) and 1915A and Title 42, United States Code section
7 1997e(c), and granted plaintiff leave to file a Second Amended Complaint.

8 On July 12, 2018, plaintiff formally filed a Second Amended Complaint
9 suing six CMC officials, namely: (1) Correctional Officer (C/O) Ayala; (2) C/O
10 Akrami; (3) Lieutenant Blankenship; (4) Lieutenant Curry; (5) C/O Duke; and
11 (6) Correctional Captain R. Grillo (collectively “defendants”). Plaintiff sued the
12 first four defendants in their individual and official capacities, but did not specify
13 the capacity/capacities in which he sued the last two defendants. Plaintiff appeared
14 to claim that certain defendants deprived him of due process and equal protection
15 under the 14th Amendment and of his right to petition and seek redress of
16 grievances under the 1st Amendment, and sought solely monetary relief.

17 On November 30, 2018, this Court screened the Second Amended
18 Complaint, notified plaintiff of multiple deficiencies therein, dismissed the Second
19 Amended Complaint with leave to amend and directed plaintiff, within twenty-one
20 (21) days, to file a Third Amended Complaint or a signed Notice of Dismissal
21 (“November Order”). The November Order further expressly cautioned plaintiff in
22 bold-faced print that the failure timely to file a Third Amended Complaint or a
23 Notice of Dismissal may be deemed plaintiff’s admission that amendment is futile
24 and may result in the dismissal of this action, with or without prejudice, on the
25 grounds set forth in the November Order, on the ground that amendment is futile,
26 for failure diligently to prosecute, and/or for failure to comply with the November
27 Order.

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1 Plaintiff's deadline to file a Third Amended Complaint or a Notice of
2 Dismissal expired on December 21, 2018 – more than two months ago. To date,
3 plaintiff has failed to file a Third Amended Complaint or a Notice of Dismissal.
4 Nor has plaintiff sought an extension of such deadline or otherwise communicated
5 with the Court since the issuance of the November Order.

6 **II. DISCUSSION**

7 Based upon the record and the applicable law, and as further discussed
8 below, the Court dismisses this action due to plaintiff's failure to comply with Rule
9 10 of the Federal Rules of Civil Procedure, failure to state a claim upon which
10 relief can be granted, failure to comply with the November Order, and failure
11 diligently to prosecute.

12 First, as explained in detail in the November Order, the Second Amended
13 Complaint (1) violated Rule 10 of the Federal Rules of Civil Procedure because,
14 among other things, it did not name all defendants in the caption; and (2) failed to
15 state a viable claim against any defendant. The November Order explained in
16 detail what plaintiff needed to do to cure the deficiencies in his pleading and
17 granted plaintiff leave to file a Third Amended Complaint to the extent he was able
18 to cure the multiple identified pleading deficiencies. The November Order further
19 cautioned plaintiff that the action may be dismissed if he failed timely to file a
20 Third Amended Complaint or a Notice of Dismissal. Since plaintiff failed to file a
21 Third Amended Complaint despite having been given an opportunity to do so, the
22 Court can only conclude that plaintiff is simply unable or unwilling to draft a
23 complaint that comports with Rule 10 and states a viable claim for relief and deems
24 such failure an admission that amendment is futile. See, e.g., Knapp v. Hogan, 738
25 F.3d 1106, 1110 (9th Cir. 2013) (“When a litigant knowingly and repeatedly
26 refuses to conform his pleadings to the requirements of the Federal Rules, it is
27 reasonable to conclude that the litigant simply *cannot* state a claim.”) (emphasis in
28 original), cert. denied, 135 S. Ct. 57 (2014); Ferdik v. Bonzelet, 963 F.2d 1258,

1 1263 (9th Cir.), as amended (May 22, 1992) (affirming dismissal of action based
2 on failure to comply with court order that complaint be amended to name all
3 defendants in caption as required by Rule 10(a)), cert. denied, 506 U.S. 915 (1992).
4 Accordingly, dismissal of the instant action based upon plaintiff’s failure to
5 comply with Rule 10 and to state a claim is appropriate.

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

18 In determining whether to dismiss an action for failure to prosecute or
19 failure to comply with court orders, a district court must consider several factors,
20 namely (1) the public’s interest in expeditious resolution of litigation; (2) the
21 court’s need to manage its docket; (3) the risk of prejudice to the defendants;
22 (4) the public policy favoring disposition of cases on their merits; and (5) the
23 availability of less drastic alternatives. See In re Eisen, 31 F.3d 1447, 1451 (9th
24 Cir. 1994) (failure to prosecute); Ferdik, 963 F.2d at 1260-61 (failure to comply
25 with court orders). Dismissal is appropriate “where at least four factors support
26 dismissal . . . or where at least three factors ‘strongly’ support dismissal.”
27 Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998) (citations


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1 omitted).¹ Here, as at least the first three factors strongly support dismissal, the
2 Court finds that plaintiff's unreasonable failure to prosecute his case and failure to
3 comply with the November Order warrant dismissal.

4 **III. ORDER**

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

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8 DATED: March 5, 2019

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11 DOLLY M. GEE
12 UNITED STATES DISTRICT JUDGE

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25 ¹Where a plaintiff is proceeding *pro se*, a court must first notify the plaintiff of the
26 deficiencies in the complaint so that the plaintiff has an opportunity "to amend effectively."
27 Ferdik, 963 F.2d at 1261 (citation omitted). A district judge may not dismiss an action for
28 failure to comply with a court order or for unreasonable failure to prosecute if the initial decision
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
Second Amended Complaint and afforded the opportunity to amend effectively. Further, the
November Order was not erroneous.