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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TREMAINE CARROLL,

Plaintiff,

v.

STATE OF CALIFORNIA, et al.,

Defendants.

Case No. 2:18-cv-01832-SVW-JC

MEMORANDUM OPINION AND
ORDER DISMISSING ACTION

I. BACKGROUND AND SUMMARY

On February 27, 2018, Plaintiff Tremaine Carroll, who is in custody, is proceeding *pro se*, and was subsequently granted leave to proceed without prepayment of filing fees (“IFP”), submitted a document which was liberally construed as a Civil Rights Complaint (“Complaint”) filed pursuant to 42 U.S.C. § 1983 and the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12101, *et seq.*¹ (Docket Nos. 1, 20).

As Plaintiff is a state prisoner and is proceeding IFP, the Court screened the Complaint to determine if the action is frivolous or malicious, fails to state a claim

¹This case was previously closed and was reopened on March 18, 2021. (See Docket No. 13 at 2-4).

1 on which relief may be granted, or seeks monetary relief against a defendant who is
2 immune from such relief. See 28 U.S.C. §§ 1915(e)(2)(B), 1915A; 42 U.S.C.
3 § 1997e(c).

4 On July 14, 2022, the Court dismissed the Complaint with leave to amend
5 due to various deficiencies (“July Order”). (Docket No. 22). The July Order gave
6 Plaintiff twenty (20) days (*i.e.*, until August 3, 2022), to file a First Amended
7 Complaint, a Notice of Dismissal, or a Notice of Intent to Stand on the Complaint
8 despite its deficiencies. The July Order cautioned Plaintiff, in bold-faced print,
9 that Plaintiff’s failure timely to file a First Amended Complaint, a Notice of
10 Dismissal, or a Notice of Intent to Stand on Complaint may be deemed Plaintiff’s
11 admission that amendment is futile, and may result in the dismissal of this action
12 with or without prejudice on the grounds set forth in the July Order, on the ground
13 that amendment is futile, for failure diligently to prosecute and/or for failure to
14 comply with the July Order.

15 On August 3, 2022, Plaintiff filed a motion requesting, among other relief, a
16 ninety-day extension of time to comply with the July Order. (Docket No. 23). On
17 August 11, 2022, the Magistrate Judge issued an order (“August Order”) granting
18 such request in part and extending Plaintiff’s deadline to comply with the July
19 Order to October 3, 2022. (Docket No. 24). The August Order again cautioned
20 Plaintiff, in bold-faced print that Plaintiff’s failure timely to file a First Amended
21 Complaint, a Notice of Dismissal, or a Notice of Intent to Stand on Complaint by
22 the foregoing extended deadline may be deemed Plaintiff’s admission that
23 amendment is futile, and may result in the dismissal of this action with or without
24 prejudice on the grounds set forth in the July Order, on the ground that amendment
25 is futile, for failure diligently to prosecute and/or for failure to comply with the
26 July Order and/or the August Order.

27 The foregoing October 3, 2022 extended deadline expired without any action
28 by Plaintiff. Plaintiff has not sought a further extension of the deadline to comply

1 with the July Order, nor has he otherwise communicated with the Court since his
2 initial extension request on August 3, 2022.

3 As explained below, this action is dismissed without prejudice based on
4 Plaintiff's failure to comply with the July Order (as extended by the August Order)
5 and Plaintiff's failure to prosecute.

6 **II. PERTINENT LAW**

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

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 defendants; (4) the
22 public policy favoring disposition of cases on their merits; and (5) the availability
23 of less drastic alternatives. See In re Eisen, 31 F.3d 1447, 1451 (9th Cir. 1994)
24 (failure to prosecute); Ferdik, 963 F.2d at 1260-61 (failure to comply with court
25 orders). Dismissal is appropriate under the foregoing analysis “where at least four
26 factors support dismissal . . . or where at least three factors ‘strongly’ support
27 dismissal.” Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998)
28 (citations omitted).

1 Where a plaintiff is proceeding *pro se*, however, the court must first notify
2 the plaintiff of the deficiencies in the complaint so that the plaintiff has an
3 opportunity “to amend effectively.” Ferdik, 963 F.2d at 1261 (citation omitted). A
4 district judge may not dismiss an action for failure to comply with a court order or
5 for unreasonable failure to prosecute if the initial decision to dismiss a complaint
6 was erroneous. Yourish v. California Amplifier, 191 F.3d 983, 992 (9th Cir. 1999)
7 (citing id.).

8 **III. DISCUSSION AND ORDER**

9 First, the July Order was not erroneous. It properly notified Plaintiff of the
10 deficiencies in the Complaint and it afforded Plaintiff an opportunity to amend
11 effectively.

12 Second, dismissal is appropriate based upon Plaintiff’s failure to comply
13 with the July Order (as extended by the August Order) and Plaintiff’s failure to
14 prosecute. The Court has considered the five factors discussed above – the
15 public’s interest in expeditious resolution of litigation, the Court’s need to manage
16 its docket, the risk of prejudice to defendants, the public policy favoring
17 disposition of cases on their merits, and the availability of less drastic alternatives.
18 The first two factors – the public’s interest in expeditiously resolving this litigation
19 and the Court’s interest in managing the docket – strongly weigh in favor of
20 dismissal. As noted above, Plaintiff has been notified of the deficiencies in the
21 Complaint and has been given the opportunity to amend it, to dismiss this matter,
22 or to notify the Court that he wishes to stand on it. He has done nothing. See
23 Edwards, 356 F.3d at 1065. The third factor, risk of prejudice to defendants, also
24 weighs strongly in favor of dismissal. See Anderson v. Air West, Inc., 542 F.2d
25 522, 524 (9th Cir. 1976) (prejudice to defendants presumed from unreasonable
26 delay) (citation omitted). The fourth factor, the public policy favoring disposition
27 of cases on their merits, is greatly outweighed by the factors in favor of dismissal
28 discussed herein. As for the fifth factor, since Plaintiff has already been cautioned

1 of the consequences of his failure to prosecute, and his failure to comply with the
2 July Order (as extended by the August Order), and has been afforded the
3 opportunity to avoid such consequences but has not responded, no sanction lesser
4 than dismissal without prejudice is feasible. See, e.g., Yourish, 191 F.3d at 989
5 (dismissal of action *with prejudice* not excessive sanction for plaintiffs' failure
6 timely to comply with court's order to submit an amended complaint).

7 IT IS THEREFORE ORDERED that this action is dismissed based upon
8 Plaintiff's failure to comply with the July Order (as extended by the August Order)
9 and Plaintiff's unreasonable failure to prosecute. Each of the foregoing bases for
10 dismissal independently justifies dismissal of this action without prejudice.

11 The Clerk shall enter Judgment accordingly.

12 IT IS SO ORDERED.

13 DATED: May 3, 2023

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16 HONORABLE STEPHEN V. WILSON
17 UNITED STATES DISTRICT JUDGE
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