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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

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11 JOSEPH HORNE,

12 Plaintiff,

13 v.

14 DARRY LEE, et al.,

15 Defendants.
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Case No. 2:18-cv-06560-MCS-JC

MEMORANDUM OPINION AND
ORDER DISMISSING ACTION

18 **I. BACKGROUND AND SUMMARY**

19 On July 30, 2018, plaintiff Joseph Horne, who is in custody, is proceeding
20 *pro se*, and has been granted leave to proceed without prepayment of filing fees
21 (“IFP”), filed a Civil Rights Complaint (“Complaint”) pursuant to 42 U.S.C. § 1983
22 against the following defendants connected with the California State Prison, Los
23 Angeles County (“CSP-LAC”) where plaintiff was formerly housed:
24 (1) Psychologist Darry Lee; (2) Sergeant D. Olmos; (3) Certified Nurse Assistant
25 Jose Medina; and multiple unnamed mental health and correctional officials
26 otherwise identified only as “Does 1-3” (“Doe Defendants”) (collectively
27 “defendants”). Plaintiff sues all defendants in their individual capacities only, and
28 seeks monetary and injunctive relief.

1 As plaintiff is a prisoner and is proceeding IFP, the assigned Magistrate
2 Judge screened the Complaint to determine if the action is frivolous or malicious,
3 fails to state a claim on which relief may be granted, or seeks monetary relief
4 against a defendant who is immune from such relief. See 28 U.S.C.
5 §§ 1915(e)(2)(B), 1915A; 42 U.S.C. § 1997e(c).

6 On February 15, 2022, the Magistrate Judge issued an Order Dismissing
7 Complaint with Leave to Amend and Directing Plaintiff to Respond to Order
8 (“February Order”).¹ (Docket No. 10). The February Order advised plaintiff that
9 the Complaint was deficient for reasons described in the February Order, dismissed
10 the Complaint with leave to amend, and directed plaintiff, within twenty days (*i.e.*,
11 by March 7, 2021), to file one of the following: (1) a first amended complaint
12 which cures the pleading defects described in the February Order; (1) a notice of
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16 ¹Absent consent by all parties, including unserved defendants, a magistrate judge cannot
17 issue dispositive orders, including an order dismissing a claim. Branch v. Umphenour, 936 F.3d
18 994, 1004 (9th Cir. 2019); see also Williams v. King, 875 F.3d 500, 504 (9th Cir. 2017)
19 (“[C]onsent of all parties (including unserved defendants) is a prerequisite to a magistrate
20 judge’s jurisdiction to enter dispositive decisions under § 636(c)(1).”); 28 U.S.C. §
21 636(b)(1)(A)-(B). However, “the dismissal of a complaint with leave to amend is a
22 non-dispositive matter.” McKeever v. Block, 932 F.2d 795, 798 (9th Cir. 1991). Accordingly, a
23 magistrate judge may dismiss a complaint with leave to amend without the approval of a district
24 judge. See id. at 797. Additionally, a plaintiff who disagrees with a magistrate judge’s order,
25 including a non-dispositive order dismissing a pleading with leave to amend, may file an
26 objection with the district judge. See Bastidas v. Chappell, 791 F.3d 1155, 1162 (9th Cir. 2015);
27 see also Hunt v. Plier, 384 F.3d 1118, 1124 (9th Cir. 2004) (“District court review of even these
28 non-dispositive matters . . . can be compelled upon objection of the party against whom the
magistrate has ruled.”) (quoting McKeever, 932 F.2d at 798). The February Order expressly
notified plaintiff that (1) the February Order constituted non-dispositive rulings on pretrial
matters; (2) to the extent a party disagreed with such non-dispositive rulings, such party may
seek review from the District Judge within fourteen (14) days; (3) to the extent a party believed
that the rulings were dispositive, rather than non-dispositive, such party had the right to object to
the determination that the rulings were non-dispositive within fourteen (14) days; and (4) a party
would be foreclosed from challenging the rulings in the February Order if such party did not
seek review thereof or object thereto. (February Order at 11 n.5).

1 dismissal; or (3) a notice of intent to stand on the Complaint.² The February Order
2 expressly cautioned plaintiff that the failure timely to file a first amended
3 complaint, a notice of dismissal, or a notice of intent to stand on the Complaint may
4 be deemed plaintiff's admission that amendment is futile and may result in the
5 dismissal of this action on the grounds set forth in the February Order, on the
6 ground that amendment is futile, for failure diligently to prosecute, and/or for
7 failure to comply with the February Order. The foregoing March 7, 2022 deadline
8 expired without any action by plaintiff. Plaintiff has not sought review of, or filed
9 any objection to the February Order and has not communicated with the Court in
10 this action since well before the February Order was issued.

11 As discussed below, this action is dismissed due to plaintiff's failure to
12 prosecute and his failure to comply with the February Order.

13 **II. PERTINENT LAW**

14 It is well-established that a district court may *sua sponte* dismiss an action
15 where the plaintiff has failed to comply with a court order and/or unreasonably
16 failed to prosecute. See Link v. Wabash Railroad Co., 370 U.S. 626, 629-33
17 (1962); see also Edwards v. Marin Park, Inc., 356 F.3d 1058, 1065 (9th Cir. 2004)
18 (*sua sponte* dismissal pursuant to Fed. R. Civ. P. 41(b) proper sanction in cases
19 where a plaintiff is notified of deficiencies in complaint and is given "the
20 opportunity to amend [the complaint] or be dismissed" but the plaintiff "[does]
21 *nothing*") (citations omitted; emphasis in original); Ferdik v. Bonzelet, 963 F.2d
22 1258, 1260 (9th Cir.), as amended (May 22, 1992) (affirming dismissal of action
23 based on failure to comply with court order that complaint be amended to name all
24 defendants in caption as required by Rule 10(a)), cert. denied, 506 U.S. 915 (1992);
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26 ²Specifically, the Magistrate Judge advised plaintiff, albeit in greater detail and with
27 citation to authorities, that the Complaint violated Rule 10 of the Federal Rules of Civil
28 Procedure because it failed to name all defendants in the caption and failed to state a viable
Eighth Amendment claim against at least multiple defendants.

1 McKeever v. Block, 932 F.2d 795, 797 (9th Cir. 1991) (district court may *sua*
2 *sponte* dismiss action “only for an unreasonable failure to prosecute”) (citations
3 omitted).

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

15 Where a plaintiff is proceeding *pro se*, however, the court must first notify
16 the plaintiff of the deficiencies in the complaint so that the plaintiff has an
17 opportunity “to amend effectively.” Ferdik, 963 F.2d at 1261 (citation omitted). In
18 addition, where a Magistrate Judge originally dismissed the complaint with leave to
19 amend, the District Judge must review that decision before dismissing the entire
20 action. See McKeever, 932 F.2d at 797 (“While the magistrate can dismiss
21 complaints with leave to amend, the district court necessarily must review that
22 decision before dismissing the entire action.”). A district judge may not dismiss an
23 action for failure to comply with a court order (*e.g.*, the Magistrate Judge’s order to
24 file an amended complaint) or for unreasonable failure to prosecute if the initial
25 decision to dismiss a complaint was erroneous. Yourish v. California Amplifier,
26 191 F.3d 983, 992 (9th Cir. 1999) (citing *id.*).

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1 **III. DISCUSSION AND ORDER**

2 First, the Court has reviewed the February Order and finds that it adequately
3 and properly notified plaintiff of the deficiencies in the Complaint and afforded him
4 an opportunity to amend effectively. This Court agrees with and adopts the
5 February Order, and finds that the Magistrate Judge properly dismissed the
6 Complaint with leave to amend for the reasons discussed therein.

7 Second, dismissal is appropriate based upon plaintiff’s failure to comply with
8 the February Order and the failure to prosecute. The Court has considered the five
9 factors discussed above – the public’s interest in expeditious resolution of litigation,
10 the court’s need to manage its docket, the risk of prejudice to defendants, the public
11 policy favoring disposition of cases on their merits, and the availability of less
12 drastic alternatives. The first two factors – the public’s interest in expeditiously
13 resolving this litigation and the Court’s interest in managing the docket – strongly
14 weigh in favor of dismissal. As noted above, plaintiff has been notified of the
15 deficiencies in the Complaint and has been given the opportunity to amend it, to
16 dismiss it, or to notify the Court that he wishes to stand thereon. He has done
17 nothing. See Edwards, 356 F.3d at 1065. The third factor, risk of prejudice to
18 defendants, also weighs strongly in favor of dismissal. See Anderson v. Air West,
19 Inc., 542 F.2d 522, 524 (9th Cir. 1976) (prejudice to defendants presumed from
20 unreasonable delay) (citation omitted). The fourth factor, the public policy favoring
21 disposition of cases on their merits, is greatly outweighed by the factors in favor of
22 dismissal discussed herein. As for the fifth factor, since plaintiff has already been
23 cautioned of the consequences of his failure to prosecute and his failure to comply
24 with the February Order, and has been afforded the opportunity to avoid such
25 consequences but has not responded, no sanction lesser than dismissal is feasible.
26 See, e.g., Yourish, 191 F.3d at 989 (dismissal of action *with prejudice* not excessive
27 sanction for plaintiffs’ failure timely to comply with court’s order to submit an
28 amended complaint).

1 IT IS THEREFORE ORDERED that this action is dismissed based upon
2 plaintiff's unreasonable failure to prosecute and his failure to comply with the
3 February Order.

4 IT IS SO ORDERED.

5 DATED: March 22, 2022

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8 HONORABLE MARK C. SCARSI
9 UNITED STATES DISTRICT JUDGE
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