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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

RICARDO BENAVIDEZ-RUIZ,  
Plaintiff,  
v.  
CO VILLASENOR, et al.,  
Defendants.

Case No. EDCV 16-1838 PSG(JC)  
MEMORANDUM OPINION AND  
ORDER DISMISSING ACTION

**I. BACKGROUND AND SUMMARY**

On August 26, 2016, Ricardo Benavidez-Ruiz (“plaintiff”), who is a prisoner at the California State Prison, Corcoran Substance Abuse Treatment Facility, is proceeding without a lawyer (*i.e.*, “*pro se*”), and has been granted leave to proceed *in forma pauperis*, filed a Civil Rights Complaint (“Original Complaint”) pursuant to 42 U.S.C. § 1983 against the following three defendants connected with the “Chino State Prison”: (1) Correctional Officer Villasenor; (2) Correctional Officer Rodriguez; and (3) Correctional Lieutenant Ramirez (collectively “defendants”). (Original Complaint at 3). Very liberally construed the Original Complaint essentially alleged: (1) plaintiff is a sensitive needs (“SNY”) inmate in the “Enhanced Outpatient Program” and needs to use a cane

1 because he only has one leg; (2) on November 27, 2015, plaintiff slipped and fell  
2 in a shower that did not meet the requirements of the Americans with Disabilities  
3 Act (“ADA”) (*i.e.*, the shower had a raised step and did not have ADA hand rails  
4 installed); and (3) on one or more unspecified occasions, various defendants  
5 directed plaintiff to use the “mainline” and/or “dayroom” showers which placed  
6 plaintiff “at direct risk of harm or death by mainline inmates.” (Original  
7 Complaint at 5-5a). Plaintiff sued defendants in their individual capacities only  
8 and sought monetary relief.

9 On December 7, 2016, this Court screened the Original Complaint, notified  
10 plaintiff of multiple deficiencies therein, and dismissed the Original Complaint  
11 with leave to amend (“Dismissal Order”). (Docket No. 8). The Court granted  
12 plaintiff leave to file a First Amended Complaint within twenty (20) days, *i.e.*, by  
13 December 27, 2016, to the extent plaintiff was able to cure the pleading defects set  
14 forth in the Dismissal Order. (Docket No. 8 at 9). The Dismissal Order further  
15 directed plaintiff, in the event he elected not to proceed with this action, to file a  
16 Notice of Dismissal. (Docket No. 8 at 9). The Dismissal Order also provided the  
17 following warning:

18 **Plaintiff is cautioned that, absent further order of the**  
19 **Court, plaintiff’s failure timely to file a First Amended Complaint**  
20 **or Notice of Dismissal may result in the dismissal of this action**  
21 **with or without prejudice on the grounds set forth [in the**  
22 **Dismissal Order] and/or for failure diligently to prosecute, and/or**  
23 **failure to comply with the Court’s [Dismissal] Order.**

24 (Docket No. 8 at 9-10) (emphasis in original).

25 Plaintiff was thereafter granted two extensions of time to file a First  
26 Amended Complaint or a Notice of Dismissal (“Extensions Orders”), ultimately  
27 extending his deadline to file such documents to **February 24, 2017**. (Docket Nos.  
28 11, 14). Both Extensions Orders contained the following warning:

1           **Plaintiff is cautioned that, absent further order of the**  
2           **Court, plaintiff’s failure timely to file a First Amended Complaint**  
3           **or Notice of Dismissal may result in the dismissal of this action**  
4           **with or without prejudice on the grounds set forth [in the**  
5           **Dismissal Order] and/or for failure diligently to prosecute, and/or**  
6           **failure to comply with the Court’s Orders.**

7 (Docket No. 11 at 1-2; Docket No. 14 at 2) (emphasis in original). Plaintiff’s  
8 twice-extended deadline to file a First Amended Complaint or a Notice of  
9 Dismissal has now expired. Plaintiff has not filed a First Amended Complaint or a  
10 Notice of Dismissal and has not requested a further extension of time to do so.

## 11 **II. DISCUSSION**

12           Based upon the record and the applicable law, and as further discussed  
13 below, the Court dismisses this action due to plaintiff’s failure to state a claim  
14 upon which relief can be granted, his failure to comply with the Dismissal Order,  
15 and his failure diligently to prosecute.

16           First, as explained in detail in the Dismissal Order, the Original Complaint  
17 failed to state a claim upon which relief may be granted. The Dismissal Order  
18 explained in detail what plaintiff needed to do to cure the deficiencies in his  
19 pleading, granted plaintiff ample leave to file an amended complaint to the extent  
20 he was able to cure the multiple pleading deficiencies identified, and warned  
21 plaintiff that the action would be dismissed if he failed timely to file such an  
22 amendment. Plaintiff was thereafter afforded two extensions of time to file an  
23 amended pleading and was twice again warned that the action would be dismissed  
24 if he failed timely to do so. Since plaintiff did not file an amended complaint  
25 despite having been given an opportunity to do so, the Court can only conclude  
26 that plaintiff is simply unable or unwilling to draft a complaint that states viable  
27 claims for relief. See, e.g., Knapp v. Hogan, 738 F.3d 1106, 1110 (9th Cir. 2013)  
28 (“When a litigant knowingly and repeatedly refuses to conform his pleadings to the

1 requirements of the Federal Rules, it is reasonable to conclude that the litigant  
2 simply *cannot* state a claim.”) (emphasis in original), cert. denied, 135 S. Ct. 57  
3 (2014). Accordingly, dismissal of the instant action based upon plaintiff’s failure  
4 to state a claim is appropriate.

5 Second, dismissal is appropriate based upon plaintiff’s failure to comply  
6 with the Dismissal Order and the failure diligently to prosecute. It is well-  
7 established that a district court may *sua sponte* dismiss an action where a plaintiff  
8 has failed to comply with a court order and/or unreasonably failed to prosecute.  
9 See Link v. Wabash Railroad Co., 370 U.S. 626, 629-33 (1962); Ferdik v.  
10 Bonzelet, 963 F.2d 1258, 1260 (9th Cir.) (as amended), cert. denied, 506 U.S. 915  
11 (1992); see also McKeever v. Block, 932 F.2d 795, 797 (9th Cir. 1991) (district  
12 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 the defendant;  
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

28 ///

1 omitted).<sup>1</sup> 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 Dismissal Order warrant dismissal.

4 **III. ORDER**

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

7 DATED: 3/21/17



10 HONORABLE PHILIP S. GUTIERREZ  
11 UNITED STATES DISTRICT JUDGE

23 \_\_\_\_\_  
24 <sup>1</sup>Where 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 (*e.g.*, the Dismissal Order) or for unreasonable failure to  
28 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 has  
been notified of the deficiencies in the Original Complaint and has been afforded the opportunity  
to amend effectively. Further, the Court’s Dismissal Order was not erroneous.