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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PAUL MILTON DAVIS, JR.,

Plaintiff,

v.

COUNTY OF SAN BERNARDINO,
et al.,

Defendants.

Case No. EDCV 18-1325 JFW(JC)

MEMORANDUM OPINION AND
ORDER DISMISSING ACTION

I. BACKGROUND AND SUMMARY

On June 20, 2018, plaintiff Paul Milton Davis, Jr., 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 (“Complaint” or “Comp.”) pursuant to 42 U.S.C. § 1983 against the County of San Bernardino and Dr. Brian Jarman based upon the alleged failure of such defendants to provide plaintiff with phisoderm bodywash for a medical skin condition when he was housed at the West Valley Detention Center. (Comp. at 1-3, 5).

On July 17, 2018, this Court screened the Complaint pursuant to Title 28, United States Code sections 1915(e)(2)(B) and 1915A and Title 42, United States

1 Code section 1997e(c), notified plaintiff of multiple deficiencies therein, dismissed
2 the Complaint with leave to amend and directed plaintiff, within fourteen (14)
3 days, to file a First Amended Complaint or a signed Notice of Dismissal (“July
4 Order”). The July Order further expressly cautioned plaintiff in bold-faced print
5 that the failure timely to file a First Amended Complaint or a Notice of Dismissal
6 may be deemed plaintiff’s admission that amendment is futile and may result in the
7 dismissal of this action, with or without prejudice, on the grounds set forth in the
8 July Order, on the ground that amendment is futile, for failure diligently to
9 prosecute, and/or for failure to comply with the July Order.

10 On July 30, 2018, petitioner requested an extension of time to comply with
11 the July Order. On August 6, 2018, the Magistrate Judge granted such request and
12 extended plaintiff’s deadline to comply with the July Order to August 30, 2018
13 (“August Order”). The August Order again expressly cautioned plaintiff in bold-
14 faced print that the failure timely to file a First Amended Complaint or a Notice of
15 Dismissal may be deemed plaintiff’s admission that amendment is futile and may
16 result in the dismissal of this action, with or without prejudice, on the grounds set
17 forth in the July Order, on the ground that amendment is futile, for failure
18 diligently to prosecute, and/or for failure to comply with the Court’s Order.

19 Plaintiff’s extended deadline to file a First Amended Complaint or a Notice
20 of Dismissal expired on August 30, 2018 – more than two weeks ago. To date,
21 plaintiff has failed to file a First Amended Complaint or a Notice of Dismissal.
22 Nor has plaintiff filed another extension request or otherwise communicated with
23 the Court since the issuance of the August Order.

24 **II. DISCUSSION**

25 Based upon the record and the applicable law, and as further discussed
26 below, the Court dismisses this action due to plaintiff’s failure to comply with Rule
27 10 of the Federal Rules of Civil Procedure, failure to state a claim

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1 upon which relief can be granted, failure to comply with the July Order, and failure
2 diligently to prosecute.

3 First, as explained in detail in the July Order, the Complaint (1) violated
4 Rule 10 of the Federal Rules of Civil Procedure because, among other things, it did
5 not name both defendants in the caption or allege claims in sequentially numbered
6 paragraphs, each limited as far as practicable to a single set of circumstances; and
7 (2) failed to state a viable claim against any defendant. The July Order explained
8 in detail what plaintiff needed to do to cure the deficiencies in his pleading and
9 granted plaintiff leave to file a First Amended Complaint to the extent he was able
10 to cure the multiple identified pleading deficiencies. The July Order further
11 cautioned plaintiff that the action may be dismissed if he failed timely to file a First
12 Amended Complaint or a Notice of Dismissal. Since plaintiff failed to file a First
13 Amended Complaint despite having been given an opportunity and an extension of
14 time to do so, the Court can only conclude that plaintiff is simply unable or
15 unwilling to draft a complaint that comports with Rule 10 and states a viable claim
16 for relief and deems such failure an admission that amendment is futile. See, e.g.,
17 Knapp v. Hogan, 738 F.3d 1106, 1110 (9th Cir. 2013) (“When a litigant knowingly
18 and repeatedly refuses to conform his pleadings to the requirements of the Federal
19 Rules, it is reasonable to conclude that the litigant simply *cannot* state a claim.”)
20 (emphasis in original), cert. denied, 135 S. Ct. 57 (2014); Ferdik v. Bonzelet, 963
21 F.2d 1258, 1263 (9th Cir.), as amended (May 22, 1992) (affirming dismissal of
22 action based on failure to comply with court order that complaint be amended to
23 name all defendants in caption as required by Rule 10(a)), cert. denied, 506 U.S.
24 915 (1992). Accordingly, dismissal of the instant action based upon plaintiff’s
25 failure to comply with Rule 10 and to state a claim is appropriate.

26 Second, dismissal is appropriate based upon plaintiff’s failure to comply
27 with the July Order and the failure diligently to prosecute. It is well-established
28 that a district court may *sua sponte* dismiss an action where a plaintiff has failed to

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


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

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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
Complaint and afforded the opportunity and an extension of time to amend effectively. Further,
the July Order was not erroneous.

1 **III. ORDER**

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

4 DATED: September 18, 2018

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8 HONORABLE JOHN F. WALTER
9 UNITED STATES DISTRICT JUDGE
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