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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ELVIN JOHN CABRERA,
Plaintiff,
v.
THOMAS M. MADDOCK,
Defendant.

CASE No. 1:10-cv-00611-LJO-MJS (PC)
**FINDINGS AND RECOMMENDATION TO
DISMISS ACTION FOR FAILURE TO
OBEY COURT ORDER AND FAILURE TO
PROSECUTE**
(ECF No. 31)
**FOURTEEN (14) DAY OBJECTION
DEADLINE**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 28 U.S.C. § 1983. The action proceeds on Plaintiff's Fourteenth Amendment Due Process claim against Defendants Gentry, Sanchez, Sigsten, Buechner, Jakabusky, and Kingston. (ECF No. 23.)

On December 28, 2015, Defendants filed a motion to dismiss for failure to state a claim. (ECF No. 28.) Plaintiff did not file an opposition or statement of non-opposition to Defendant's motion. On February 12, 2016, the Court ordered Plaintiff to file an opposition or statement of non-opposition within twenty-one days and warned Plaintiff that failure to do so would result in dismissal of the action with prejudice. (ECF No. 31.)

1 The twenty-one day deadline passed without Plaintiff either filing an opposition or
2 statement of non-opposition, or seeking an extension of time to do so.

3 Local Rule 110 provides that “failure of counsel or of a party to comply with these
4 Rules or with any order of the Court may be grounds for imposition by the Court of any
5 and all sanctions . . . within the inherent power of the Court.” District courts have the
6 inherent power to control their dockets and “in the exercise of that power, they may
7 impose sanctions including, where appropriate . . . dismissal of a case.” Thompson v.
8 Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with
9 prejudice, based on a party’s failure to prosecute, failure to obey a court order, or failure
10 to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)
11 (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-
12 61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of a
13 complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure
14 to comply with local rule requiring pro se plaintiffs to keep court apprised of address);
15 Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to
16 comply with a court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986)
17 (dismissal for lack of prosecution and failure to comply with local rules).

18 In determining whether to dismiss an action for lack of prosecution, failure to obey
19 a court order, or failure to comply with local rules, the Court must consider several
20 factors: (1) the public’s interest in expeditious resolution of litigation, (2) the Court’s need
21 to manage its docket, (3) the risk of prejudice to the defendants, (4) the public policy
22 favoring disposition of cases on their merits, and (5) the availability of less drastic
23 alternatives. Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone, 833
24 F.2d at 130; Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

25 In the instant case, the public’s interest in expeditiously resolving this litigation
26 and the Court’s interest in managing its docket weigh in favor of dismissal. The third
27 factor, risk of prejudice to Defendants, also weighs in favor of dismissal, since a
28 presumption of injury arises from the occurrence of unreasonable delay in prosecuting

1 this action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor –
2 public policy favoring disposition of cases on their merits – is greatly outweighed by the
3 factors in favor of dismissal discussed herein. Finally, as for the availability of lesser
4 sanctions, at this stage in the proceedings there is little available which would constitute
5 a satisfactory lesser sanction while preserving scarce Court resources. Plaintiff has not
6 paid the filing fee for this action and is likely unable to pay, making monetary sanctions
7 of little use.

8 Based on the foregoing, it is HEREBY RECOMMENDED that the action be
9 dismissed, with prejudice, for failure to obey a court order and failure to prosecute.

10 The findings and recommendation are submitted to the United States District
11 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
12 fourteen (14) days after being served with the findings and recommendation, any party
13 may file written objections with the Court and serve a copy on all parties. Such a
14 document should be captioned “Objections to Magistrate Judge’s Findings and
15 Recommendation.” Any reply to the objections shall be served and filed within fourteen
16 (14) days after service of the objections. The parties are advised that failure to file
17 objections within the specified time may result in the waiver of rights on appeal.
18 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923
19 F.2d 1391, 1394 (9th Cir. 1991)).

20
21 IT IS SO ORDERED.

22 Dated: March 10, 2016

/s/ Michael J. Seng
23 UNITED STATES MAGISTRATE JUDGE