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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICHARD J. TURNER, II, Case: No. 1:10-cv-01490-GBC (PC)
Plaintiff, ORDER DISMISSING ACTION FOR FAILURE
v. TO OBEY COURT ORDER
JAMES D. HARTLEY, et al., (Doc. 10)
Defendants.

I. Factual and Procedural Background

Richard J. Turner (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. On August 18, 2010, Plaintiff filed his original complaint. (Doc. 1). On June 27, 2011, the Court struck Plaintiff’s original complaint for lack of signature and ordered Plaintiff to resubmit complaint with a signature. (Doc. 10). To date, Plaintiff as failed to respond to the order.

II. Failure to Comply With Court Order and Failure to Prosecute

Local Rule 110 provides that “failure of counsel or of a party to comply with these Local Rules or with any order of the Court may be grounds for the imposition by the Court of any and all sanctions . . . within the inherent power of the Court.” District courts have the inherent power to control their dockets and “in the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal of a case.” *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th Cir. 1986).

1 A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action,
2 failure to obey a court order, or failure to comply with local rules. *See, e.g. Ghazali v. Moran*, 46
3 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963
4 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring
5 amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for
6 failure to comply with local rule requiring pro se plaintiffs to keep court apprised of address);
7 *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply
8 with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure
9 to lack of prosecution and failure to comply with local rules).

10 In determining whether to dismiss this action for failure to comply with the directives set
11 forth in its order, "the Court must weigh the following factors: (1) the public's interest in expeditious
12 resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to
13 defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public policy
14 favoring disposition of cases on their merits." *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir.
15 2002) (citing *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

16 'The public's interest in expeditious resolution of litigation always favors dismissal.'
17 *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (quoting *Yourish v. California Amplifier*, 191 F.3d 983,
18 990 (9th Cir. 1999)). Plaintiff is obligated to comply with the Local Rules and was informed via
19 court order regarding the need resubmit a complaint with his signature. (Doc. 10). The Court's
20 effort was met with silence from Plaintiff, and the Court cannot effectively manage its docket if a
21 party ceases litigating the case. Thus, both the first and second factors weigh in favor of dismissal.

22 Turning to the risk of prejudice, "pendency of a lawsuit is not sufficiently prejudicial in and
23 of itself to warrant dismissal." *Id.* (citing *Yourish* at 991). However, "delay inherently increases the
24 risk that witnesses' memories will fade and evidence will become stale," *id.*, and it is Plaintiff's
25 failure to comply with the Local Rules and the Court's order that is causing delay. Therefore, the
26 third factor weight in favor of dismissal.

27 As for the availability of lesser sanctions, at this stage in the proceedings there is little
28 available to the Court which would constitute a satisfactory lesser sanction while protecting the

1 Court from further unnecessary expenditure of its scarce resources. As Plaintiff is proceeding in
2 forma pauperis in this action, making monetary sanctions is of little use, and given this stage of the
3 proceedings, the preclusion of evidence or witnesses is likely to have no effect given that Plaintiff
4 has ceased litigating his case.

5 Finally, because public policy favors disposition on the merits, this factor usually weighs
6 against dismissal. *Id.* at 643. However, “this factor lends little support to a party whose
7 responsibility it is to move a case toward disposition on the merits but whose conduct impedes
8 progress in that direction,” *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d
9 1217, 1228 (9th Cir. 2006) (internal quotations and citations omitted), as is the case here.

10 In summary, Plaintiff filed this action but is no longer prosecuting it. More than a month has
11 passed since the Court originally ordered Plaintiff to resubmit the complaint with his signature, and
12 Plaintiff has not responded, despite being notified of the requirement via the Court’s order
13 specifically directing him to respond. (Doc. 10).

14
15 **III. Conclusion and Order**

16 Since Plaintiff has failed to respond to the Court’s orders on June 27, 2011, the Court
17 HEREBY ORDERS: Plaintiff’s action is DISMISSED WITHOUT PREJUDICE for failure to obey
18 court orders.

19
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21 IT IS SO ORDERED.

22 Dated: August 8, 2011

23 
UNITED STATES MAGISTRATE JUDGE