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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERTO HERRERA,
Plaintiff,
v.
ROUCH,
Defendant.

CASE NO. 1:13-cv-00289-LJO-MJS (PC)
**FINDINGS AND RECOMMENDATION TO
DISMISS ACTION FOR FAILURE TO
OBEY COURT ORDER AND FAILURE TO
PROSECUTE**
(ECF No. 103)
**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 42 U.S.C. § 1983. The action proceeds against Defendant Rouch on Plaintiff's Eighth Amendment inadequate medical care claim. (ECF No. 18.)

On August 19, 2014, Defendant filed a motion for summary judgment on the ground that Plaintiff did not exhaust his administrative remedies. (ECF No. 81.) Plaintiff filed a motion for the appointment of a medical expert and appointment of counsel to oppose the motion. (ECF No. 84.) On December 11, 2014, the Court denied Plaintiff's motion, advised Plaintiff of his rights, obligations, and methods for opposing Defendants' motion, and ordered Plaintiff to file an opposition to Defendant's motion within twenty

1 one days. (ECF No. 103.) Plaintiff was warned that his failure to file an opposition or
2 statement of non-opposition could result in dismissal of the action for failure to
3 prosecute. The twenty-one day deadline passed without Plaintiff either filing an
4 opposition or statement of non-opposition, or seeking an extension of time to do so.

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

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

27 In the instant case, the public’s interest in expeditiously resolving this litigation
28 and the Court’s interest in managing its docket weigh in favor of dismissal. The third

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

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

12 These Findings and Recommendations are submitted to the United States District
13 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
14 fourteen (14) days after being served with these Findings and Recommendations, any
15 party may file written objections with the Court and serve a copy on all parties. Such a
16 document should be captioned “Objections to Magistrate Judge’s Findings and
17 Recommendations.” Any reply to the objections shall be served and filed within fourteen
18 (14) days after service of the objections. The parties are advised that failure to file
19 objections within the specified time may result in the waiver of rights on appeal.
20 Wilkerson v. Wheeler, ___ F.3d ___, ___, No. 11-17911, 2014 WL 6435497, at *3 (9th Cir.
21 Nov. 18, 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

22
23 IT IS SO ORDERED.

24 Dated: January 14, 2015

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

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