

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MATTHEW JAMES GRIFFIN,

Case No. 1:13-CV-01599-LJO-BAM (PC)

Plaintiff,

FINDINGS AND RECOMMENDATIONS REGARDING DEFENDANTS' MOTION FOR SANCTIONS

A. JOHNSON *et al.*

(ECF No. 112)

Defendants.

FOURTEEN DAY DEADLINE

Plaintiff Matthew James Griffin (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Currently pending before the Court is a motion for sanctions filed by Defendants Ross, Sexton, Smith, Thor, and Valdez (“Defendants”) based on Plaintiff’s failure to respond to interrogatories. (ECF No. 112.) Plaintiff opposed the motion on November 7, 2016. (ECF No. 133.) Defendants replied on November 14, 2016, and Defendants Johnson, Gonzales, Busch and Munoz joined in the reply on November 15, 2016. (ECF Nos. 136, 137.)

I. Background

On February 1, 2016, the Court issued a Discovery and Scheduling Order, which set the

1 deadline for completion of discovery as October 1, 2016. (ECF No. 48.) On April 8, 2016, the
2 Court stayed discovery during settlement negotiations, but lifted the stay on May 5, 2016. (ECF
3 Nos. 70, 75.)

4 On May 13, 2016, Defendants served their discovery requests on Plaintiff. (ECF No.
5 112-1, Declaration of Counsel K. Burnley (“Burnley Decl.”), Ex. A.) On June 20, 2016, Plaintiff
6 moved for a protective order because Defendants inadvertently requested thirty days for
7 Plaintiff’s responses, instead of the forty-five days permitted by the Court’s Discovery and
8 Scheduling Order. (ECF No. 83.) On June 23, 2016, Defendants acknowledged the error and re-
9 served their discovery requests. (ECF No. 87; Burnley Decl., Ex. B.) After failing to receive
10 discovery responses, Defendants filed a motion to compel. (ECF No. 90.) However, the Court
11 denied the motion without prejudice, because it issued an order directing Plaintiff to provide
12 discovery responses by September 26, 2016. (ECF No. 94.)

13 Defendants received Plaintiff’s responses to Defendants’ Request for Production of
14 Documents (Set One) on September 26, 2016. Defendants also received Plaintiff’s responses to
15 Defendant Bell’s Request for Responses to Interrogatories (Set One) and Defendant Kul’s
16 Request for Responses to Interrogatories (Set One) on September 28, 2016. (Burnley Decl., Ex.
17 C.) Plaintiff failed to serve timely responses to Defendants Ross, Sexton, Smith, Thor, and
18 Valdez’s interrogatories. As a result, Defendants filed the instant motion for sanctions pursuant
19 to Federal Rule of Civil Procedure 37(b)(2).

20 By the instant motion, Defendants contend that Plaintiff’s failure to respond discovery
21 has resulted in prejudice because they cannot defend against Plaintiff’s claims. Defendants
22 request that Plaintiff be prohibited from supporting his case or opposing Defendants’ defenses
23 with any evidence not disclosed in the discovery process. Defendants also contend that
24 Plaintiff’s willful failure to comply with the Court’s order should subject his case to dismissal.

25 Plaintiff opposed the motion for sanctions on November 7, 2016, contending that he had
26 responded in writing to all of Defendants discovery requests, including 173 interrogatories and
27 205 requests for production of documents.¹ (ECF No. 133 at p. 2.) Additionally, Plaintiff

28 ¹ Plaintiff reported that he also had responded to discovery requests propounded by Defendants Busch,

1 reported that Defendants took his deposition on September 23, 2016. In opposing sanctions,
2 Plaintiff argues that Defendants were given 5 months to respond to his single discovery request,
3 but he was not afforded equal time. Plaintiff further argues that he has not willfully failed to
4 obey any order and any delay in responding was due to his conditions of confinement, indigent
5 status, lack of a law library, and denial of photocopies by the prison in North Carolina. (*Id.* at
6 pp. 4-5.) Plaintiff requests that the Court deny the motion for sanctions and issue a protective
7 order in his favor because he has already responded in writing to Defendants' discovery requests.

8 In reply, Defendants note that Plaintiff does not dispute that he failed to timely respond to
9 Defendants' discovery requests, and that he instead claims that he was unable to respond due to
10 his conditions of confinement. (ECF No. 136 at p. 1.) Defendants argue, however, that Plaintiff
11 had four months to respond to discovery requests and then failed to comply with the Court's
12 order to respond by September 26, 2016. Defendants report that Plaintiff did not provide
13 responses to Sexton and Valdez's interrogatories until October 10, 2016, and did not provide
14 responses to Defendants Thor, Ross and Smith's interrogatories until October 14, 2016.
15 Defendants argue that the failure to timely respond substantially prejudiced them in this action,
16 and they were forced to take Plaintiff's deposition without the aid of his discovery responses.
17 Defendants further argue that they could not conduct any additional discovery after receiving
18 Plaintiff's late responses because the deadline to complete discovery was October 1, 2016.

19 **II. Motion for Sanctions**

20 **A. Legal Standard**

21 Rule 37(b)(2) of the Federal Rules of Civil Procedure provides that if a party fails to obey
22 an order to provide or permit discovery, the Court may issue further just orders, which may
23 include prohibiting the disobedient party from supporting or opposing designated claims or
24 defenses, or from introducing designated matters in evidence. Fed. R. Civ. P. 37(b)(2)(A). The
25 Court also may dismiss the action or proceeding in whole or in part. *Id.*

26 Additionally, Local Rule 110 provides that "[f]ailure . . . of a party to comply . . . with
27 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . .

1 within the inherent power of the Court.” District courts have the inherent power to control their
2 dockets and “[i]n the exercise of that power they may impose sanctions including, where
3 appropriate, . . . dismissal.” Thompson v. Hous. Auth., 782 F.2d 829, 831 (9th Cir. 1986). A
4 court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action,
5 failure to obey a court order, or failure to comply with local rules. See, e.g., Ghazali v. Moran,
6 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v.
7 Bonzelet, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order
8 requiring amendment of complaint); Malone v. U.S. Postal Serv., 833 F.2d 128, 130–33 (9th Cir.
9 1987) (dismissal for failure to comply with court order).

10 In determining whether to dismiss an action, the Court must consider several factors: (1)
11 the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its
12 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
13 cases on their merits; and (5) the availability of less drastic sanctions. Henderson v. Duncan, 779
14 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988).

15 **B. Analysis**

16 Here, the Court does not find that sanctions are warranted—evidentiary or otherwise.
17 First, Defendants offer no explanation as to why they did not file a motion to compel discovery
18 before the October 1, 2016 deadline, after they failed to receive timely responses to their
19 discovery requests. Second, this is not a situation in which Plaintiff’s actions were willful,
20 resulting in a wholesale failure to respond to discovery. Instead, Defendants admit that they
21 received Plaintiff’s discovery responses less than 3 weeks after the Court’s September 26, 2016
22 deadline. (ECF No. 136, p. 2.) The Court also notes that Plaintiff requested a brief extension of
23 the Court’s deadline to submit his discovery responses and his request had not been resolved by
24 the time the instant motion was filed. (ECF No. 106.) Third, Defendants do not explain why or
25 how they were precluded from requesting modification of the Discovery and Scheduling Order
26 pursuant to Federal Rule of Civil Procedure 16(b)(4). Defendants claim that they were
27 prejudiced because they received Plaintiff’s responses after the relevant discovery deadline and
28 thus could not conduct additional discovery. However, there is no indication in the record that

1 they undertook any effort to extend the discovery deadlines in this action. Rather, the record
2 demonstrates that Defendants elected to file a motion to revoke Plaintiff's in forma pauperis
3 status and dismiss this action. (ECF No. 108.) Defendants later withdrew that motion, but again
4 made no effort to modify any deadlines in this action, including the discovery deadline and the
5 dispositive motion deadline. (ECF Nos. 139, 140.) Finally, Plaintiff's circumstances make the
6 imposition of sanctions unjust. In addition to the limitations of confinement imposed on all
7 prisoners, Plaintiff reportedly was subjected to additional limitations imposed by his
8 incarceration in North Carolina. Plaintiff also was required to respond to multiple sets of
9 discovery requests propounded by multiple defendants in this action.

10 **III. Conclusion and Recommendation**

11 For the reasons stated, IT IS HEREBY RECOMMENDED that Defendants' motion for
12 sanctions, filed on October 3, 2016, be DENIED.

13 These Findings and Recommendations will be submitted to the United States District
14 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
15 **fourteen (14) days** after being served with these Findings and Recommendations, the parties
16 may file written objections with the Court. The document should be captioned "Objections to
17 Magistrate Judge's Findings and Recommendations." The parties are advised that failure to file
18 objections within the specified time may result in the waiver of the "right to challenge the
19 magistrate's factual findings" on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir.
20 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

21
22 IT IS SO ORDERED.

23 Dated: September 11, 2017

24 /s/ Barbara A. McAuliffe
25 UNITED STATES MAGISTRATE JUDGE
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