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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRADY K. ARMSTRONG,
Plaintiff,
v.
HICKS,
Defendant.

Case No. 1:13-cv-01878-AWI-MJS (PC)

**FINDINGS AND RECOMMENDATION TO
DISMISS ACTION FOR FAILURE TO
OBEY A COURT ORDER AND FAILURE
TO PROSECUTE**

(ECF Nos. 26 & 28)

**FOURTEEN (14) DAY OBJECTION
DEADLINE**

I. PROCEDURAL HISTORY

Plaintiff is a former state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff's Complaint was dismissed for failure to state a claim, but he was given leave to file a first amended complaint by not later than January 30, 2014. (ECF No. 8.) Plaintiff requested, and the Court granted, four extensions of that deadline (see ECF Nos. 10, 18, 21, 26), such that, pursuant to the last extension, the first amended complaint was due July 9, 2014. Three of these extension requests were in response to the Court's orders to show cause.

The July 9, 2014 deadline passed without Plaintiff filing a first amended complaint or otherwise responding to the Court's order that he do so.

II. DISCUSSION

1 Local Rule 110 provides that “failure of counsel or of a party to comply with these
2 Rules or with any order of the Court may be grounds for imposition by the Court of any and
3 all sanctions . . . within the inherent power of the Court.” District courts have the inherent
4 power to control their dockets and “in the exercise of that power, they may impose
5 sanctions including, where appropriate . . . dismissal of a case.” *Thompson v. Housing*
6 *Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice,
7 based on a party’s failure to prosecute, failure to obey a court order, or failure to comply
8 with local rules. See, e.g., *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal
9 for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir.
10 1992) (dismissal for failure to comply with an order requiring amendment of a complaint);
11 *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to
12 comply with a court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986)
13 (dismissal for lack of prosecution and failure to comply with local rules).
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16 In determining whether to dismiss an action for lack of prosecution, failure to obey a
17 court order, or failure to comply with local rules, the Court must consider several factors: (1)
18 the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its
19 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition
20 of cases on their merits; and (5) the availability of less drastic alternatives. *Thompson*, 782
21 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at
22 1260-61; *Ghazali*, 46 F.3d at 53.
23

24 In the instant case, the public’s interest in expeditiously resolving this litigation and
25 the Court’s interest in managing its docket weigh in favor of dismissal. The third factor, risk
26 of prejudice to Defendant, also weighs in favor of dismissal, since a presumption of injury
27 arises from the occurrence of unreasonable delay in prosecuting this action. *Anderson v.*
28 *Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor -- public policy favoring

1 disposition of cases on their merits -- is outweighed here because Plaintiff has failed to
2 comply with the Court's order that he file a civil rights complaint. Notwithstanding repeated
3 extensions of time totaling over five months, Plaintiff has before the Court no pleading and
4 no cognizable claim for relief against any named defendant. Finally, as for the availability of
5 lesser sanctions, at this stage in the proceedings there is little available which would
6 constitute a satisfactory lesser sanction while preserving scarce Court resources. Plaintiff
7 has not paid the filing fee for this action and is likely unable to pay, making monetary
8 sanctions of little use.

9
10 Plaintiff was previously advised that no further extension of time would be granted
11 and that failure to file an amended pleading by the July 9th deadline would result in a
12 recommendation that this action be dismissed with prejudice subject to the "three strikes"
13 provision set forth in 28 U.S.C. § 1915(g). (See ECF 26, 2:26-3:1.)
14

15 **III. LEGAL CONCLUSIONS AND RECOMMENDATION**

16 Plaintiff has not shown good cause in avoidance of dismissal and has not filed an
17 amended civil rights complaint as ordered. The undersigned recommends that the action
18 be dismissed with prejudice, that dismissal count as a strike pursuant to 28 U.S.C. §
19 1915(g), and that the Clerk of the Court terminate any and all pending motions and close
20 the case.
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22 The Findings and Recommendation will be submitted to the United States District
23 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
24 fourteen (14) days after being served with the Findings and Recommendation, the parties
25 may file written objections with the Court. The document should be captioned "Objections
26 to Magistrate Judge's Findings and Recommendation." A party may respond to another
27 party's objections by filing a response within fourteen (14) days after being served with a
28 copy of that party's objections. The parties are advised that failure to file objections within

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the specified time may waive the right to appeal the District Court's order. *Martinez v. Ylst*,
951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: August 1, 2014

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE