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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAIME L. ZEPEDA,
Plaintiff,
v.
MATTHEW CATE, et al.,
Defendants.

Case No. 1:14-cv-00852-LJO-MJS (PC)

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

**FOURTEEN (14) DAY OBJECTION
DEADLINE**

Plaintiff is proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. On May 11, 2015, the Court found Plaintiff had stated a cognizable Eighth Amendment claim, but dismissed his remaining claims without prejudice. (ECF No. 15.) When Plaintiff failed to file an amended pleading or notify the Court of his willingness to proceed on his cognizable claim, the Court issued an order to show cause. (ECF No. 16.) Plaintiff has not responded to the Court’s order to show cause.

Local Rule 110 provides that “failure of counsel or of a party to comply with these Rules or with any order of the Court may be grounds for 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

1 impose sanctions including, where appropriate . . . dismissal of a case.” In re
2 Phenylpropanolamine Prod. Liab. Litig., 460 F.3d 1217, 1227 (9th Cir. 2006) (citing
3 Thompson v. Hous. Auth., 782 F.2d 829, 831 (9th Cir. 1986)). A court may dismiss an
4 action, with prejudice, based on a party’s failure to prosecute, failure to obey a court
5 order, or failure to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53
6 (9th Cir. 1995) (dismissal for noncompliance with local rule); Edwards v. Marin Park,
7 Inc., 356 F.3d 1058, 1065 (9th Cir. 2004) (dismissal for failure to comply with an order
8 requiring amendment of a complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir.
9 1988) (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep
10 court apprised of address); Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002)
11 (dismissal for failure to comply with a court order); Henderson v. Duncan, 779 F.2d
12 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with
13 local rules).

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16 In determining whether to dismiss an action for lack of prosecution, failure to
17 obey a court order, or failure to comply with local rules, the Court must consider several
18 factors: (1) the public’s interest in expeditious resolution of litigation, (2) the Court’s
19 need to manage its docket, (3) the risk of prejudice to the defendants, (4) the public
20 policy favoring disposition of cases on their merits, and (5) the availability of less drastic
21 alternatives. In re Phenylpropanolamine, 460 F.3d at 1226; Ferdik v. Bonzelet, 963 F.2d
22 1258, 1260-61 (9th Cir. 1992); Malone v. USPS, 833 F.2d 128, 130 (9th Cir. 1987);
23 Thompson, 782 F.2d at 831; Ghazali, 46 F.3d at 53.

24
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
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1 presumption of injury arises from the occurrence of unreasonable delay in prosecuting
2 this action. Ash v. Cvetkov, 739 F.2d 493, 496 (9th Cir. 1984). The fourth factor -- public
3 policy favoring disposition of cases on their merits -- is greatly outweighed by the factors
4 in favor of dismissal discussed herein. Finally, as for the availability of lesser sanctions,
5 at this stage in the proceedings there is little available which would constitute a
6 satisfactory lesser sanction while preserving scarce Court resources. Plaintiff has not
7 paid the filing fee for this action and is likely unable to pay, making monetary sanctions
8 of little use.

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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.

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

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25 IT IS SO ORDERED.

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27 Dated: July 31, 2015

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/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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