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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

VINCE WILLIAMS,
Plaintiff,
v.
CDCR DEPARTMENT CORRECTIONS
AND REHABILITATION, et al.,
Defendants.

1:14-cv-01912-LJO-JLT (PC)

**FINDINGS AND RECOMMENDATION TO
DISMISS WITH PREJUDICE FOR
PLAINTIFF'S FAILURE TO COMPLY
WITH THE COURT'S ORDER AND
FAILURE TO STATE A CLAIM**

(Docs. 23, 26, 28)

30-DAY DEADLINE

In this action, the Court dismissed the second amended complaint because it failed to state any cognizable claims. The Court granted Plaintiff leave to file a third amended complaint within thirty days. (Doc. 23.) Plaintiff requested a 30-day extension of time to file a third amended complaint since he was soon to be paroled. (Doc. 24.) This Court did not find this to be good cause for the extension of time and denied the request. (Doc. 26.) Plaintiff's third amended complaint was due on December 3, 2015.

More than thirty days passed without Plaintiff filing an amended complaint or other response to the Court's Order. Thus, the Court ordered Plaintiff to show cause within 21 days why this action should not be dismissed because of his failure to comply with the Court's order. (Doc. 28) More than 21 days have lapsed and Plaintiff has not filed a response to the order to show cause. Plaintiff was warned that the failure to comply with the Court's order would result in dismissal of this action and a strike would be imposed under 42 U.S.C. 1915(g) since he failed to

1 state a cognizable claim. (*Id.*)

2 The Local Rules, corresponding with Fed. R. Civ. P. 11, provide, “[f]ailure of counsel, or
3 of a party to comply with . . . any order of the Court may be grounds for the imposition by the
4 Court of any and all sanctions . . . within the inherent power of the Court.” Local Rule 110.
5 “District courts have inherent power to control their dockets,” and in exercising that power, a
6 court may impose sanctions, including dismissal of an action. *Thompson v. Housing Authority of*
7 *Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action with prejudice,
8 based on a party’s failure to prosecute an action or failure to obey a court order, or failure to
9 comply with local rules. *See, e.g. Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
10 (dismissal for failure to comply with an order requiring amendment of complaint); *Malone v. U.S.*
11 *Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with a court
12 order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to
13 prosecute and to comply with local rules).

14 Based on Plaintiff’s failure to comply with or otherwise respond to the OSC, there is no
15 alternative but to dismiss the action for his failure to respond to/obey a court order and for failure
16 to prosecute. Dismissal of this action should count as a strike under 42 U.S.C. 1915(g) since he
17 has failed to state a cognizable claim.

18 Accordingly, it is HEREBY RECOMMENDED that this action be dismissed, with
19 prejudice, for Plaintiff’s failure both to obey a court order and to prosecute this action, 42 U.S.C.
20 § 1997e (a), and that Plaintiff be given a strike under 42 U.S.C. 1915(g).

21 These Findings and Recommendations will be submitted to the United States District
22 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **30**
23 **days** after being served with these Findings and Recommendations, Plaintiff may file written
24 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s
25 Findings and Recommendations.”

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Plaintiff is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: January 11, 2016

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE