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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICARDO IVAN ARRIAGA SANCHEZ,
Plaintiff,
v.
KAWEAH DELTA, et al.,
Defendants.

Case No. 1:14-cv-02080-KJM-SAB

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSING ACTION
FOR FAILURE TO STATE A CLAIM AND
FAILURE TO PROSECUTE

OBJECTIONS DUE WITHIN THIRTY
DAYS

I.

PROCEDURAL HISTORY

Plaintiff Ricardo Ivan Arriaga Sanchez, proceeding pro se and in forma pauperis, filed a complaint on December 29, 2014. The action was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On January 7, 2015, the Court screened Plaintiff's complaint and an order issued dismissing the complaint for failure to state a claim. Plaintiff was ordered to file an amended complaint within thirty days. More than thirty days have passed and Plaintiff has not filed an amended complaint or otherwise responded to the Court's order.

II.

DISCUSSION

Local Rule 110 provides that "[f]ailure of counsel or of a party to comply with these

1 Rules or with any order of the Court may be grounds for imposition by the Court of any and all
2 sanctions . . . within the inherent power of the Court.” The Court has the inherent power to
3 control its docket and may, in the exercise of that power, impose sanctions where appropriate,
4 including dismissal of the action. Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir.
5 2000).

6 A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an
7 action, failure to obey a court order, or failure to comply with local rules. See, e.g. Ghazali v.
8 Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik
9 v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an
10 order to file an amended complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988)
11 (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised
12 of address); Malone v. United States Postal Serv., 833 F.2d 128, 130 (9th Cir. 1987) (dismissal
13 for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir.
14 1986) (dismissal for lack of prosecution and failure to comply with local rules).

15 In determining whether to dismiss an action for failure to comply with a pretrial order,
16 the Court must weigh “(1) the public’s interest in expeditious resolution of litigation; (2) the
17 court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
18 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
19 sanctions.” In re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1226
20 (9th Cir. 2006) (internal quotations and citations omitted). These factors guide a court in
21 deciding what to do, and are not conditions that must be met in order for a court to take action.
22 Id. (citation omitted).

23 In this instance the public’s interest in expeditious resolution of the litigation and the
24 Court’s need to manage its docket weigh in favor of dismissal. Id. Plaintiff was ordered to file
25 an amended complaint within thirty days of January 7, 2015. Plaintiff has neither filed an
26 amended complaint nor otherwise responded to the Court’s order. Plaintiff’s failure to comply
27 with the orders of the Court hinders the Court’s ability to move this action towards disposition,
28 and indicates that Plaintiff does not intend to diligently litigate this action.

1 Since it appears that Plaintiff does not intend to litigate this action diligently there arises a
2 rebuttable presumption of prejudice to the defendants in this action. In re Eisen, 31 F.3d 1447,
3 1452-53 (9th Cir. 1994). This risk of prejudice may be rebutted if Plaintiff offers an excuse for
4 the delay. In re Eisen, 31 F.3d at 1453. The risk of prejudice to the defendants also weighs in
5 favor of dismissal.

6 The public policy in favor of deciding cases on their merits is greatly outweighed by the
7 factors in favor of dismissal. It is Plaintiff's responsibility to move this action forward. This
8 action can proceed no further without Plaintiff's cooperation and compliance with the order at
9 issue, and the action cannot simply remain idle on the Court's docket, unprosecuted. In this
10 instance, the fourth factor does not outweigh Plaintiff's failure to comply with the Court's orders.

11 Finally, a court's warning to a party that their failure to obey the court's order will result
12 in dismissal satisfies the "consideration of alternatives" requirement. Ferdik, 963 F.2d at 1262;
13 Malone, 833 at 132-33; Henderson, 779 F.2d at 1424. The Court's January 7, 2015 order
14 requiring Plaintiff to file an amended complaint expressly stated: "If no amended complaint is
15 filed within thirty (30) days, this action will be closed." (ECF No. 4 at 4.) Thus, Plaintiff had
16 adequate warning that dismissal would result from his noncompliance with the Court's order and
17 his failure to state a claim.

18 III.

19 CONCLUSION AND RECOMMENDATION

20 Plaintiff has not filed an amended complaint in compliance with the January 7, 2015
21 order of this Court.

22 Accordingly, it is HEREBY RECOMMENDED that this action be DISMISSED, with
23 prejudice, for Plaintiff's failure to prosecute and failure to state a claim.

24 These findings and recommendations are submitted to the district judge assigned to this
25 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within thirty (30)
26 days of service of this recommendation, any party may file written objections to these findings
27 and recommendations with the Court and serve a copy on all parties. Such a document should be
28 captioned "Objections to Magistrate Judge's Findings and Recommendations." The district

1 judge will review the magistrate judge's findings and recommendations pursuant to 28 U.S.C. §
2 636(b)(1)(C). The parties are advised that failure to file objections within the specified time may
3 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)
4 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

5
6 IT IS SO ORDERED.

7 Dated: February 20, 2015


UNITED STATES MAGISTRATE JUDGE

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