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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JAMES GARRETT,)	1:15-cv-00614-AWI-BAM (PC)
)	
Plaintiff,)	FINDINGS AND RECOMMENDATIONS
)	REGARDING DISMISSAL OF ACTION
v.)	FOR FAILURE TO STATE A CLAIM,
)	FAILURE TO OBEY A COURT ORDER,
STU SHERMAN, et al.,)	AND FAILURE TO PROSECUTE
)	
Defendants.)	(ECF Nos. 11, 15, 20)
)	
)	FOURTEEN-DAY DEADLINE
)	
)	

I. Background

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

On February 1, 2016, the Court dismissed Plaintiff’s first amended complaint with leave to amend within thirty days after service. (ECF No. 7). On February 24, 2016, Plaintiff filed a motion for preliminary injunction. Although Plaintiff stated in his moving papers that his second amended complaint was attached as an exhibit, the Court did not locate a second amended complaint in Plaintiff’s filing. (ECF No. 12). Consequently, on August 15, 2016, the Court ordered Plaintiff to file a second amended complaint or notice of voluntary dismissal within thirty days. (ECF No. 15). Plaintiff was expressly warned that if he failed to file a second amended complaint in compliance with the Court’s order, then the Court would recommend

1 dismissal of this action, with prejudice, for failure to state a claim and to obey a court order.
2 (ECF No. 15 at p. 2).

3 Plaintiff failed to file a second amended complaint and did not comply with or otherwise
4 respond to the Court's order. Accordingly, on October 7, 2016, the Court issued an order for
5 Plaintiff to show cause, within fourteen (14) days of service, why this action should not be
6 dismissed based on Plaintiff's failure to comply with the Court's August 15, 2016 order, and for
7 his failure to state a claim and failure to prosecute. (ECF No. 20).

8 Plaintiff's response to the order to show cause was due on or before October 24, 2016.
9 However, as of the date of this order, Plaintiff has neither complied with the Court's orders, nor
10 otherwise communicated with the Court regarding his second amended complaint.

11 **II. Discussion**

12 Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with
13 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . .
14 within the inherent power of the Court.” District courts have the inherent power to control their
15 dockets and “[i]n the exercise of that power they may impose sanctions including, where
16 appropriate, . . . dismissal.” *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A
17 court may dismiss an action, with prejudice, based on a party's failure to prosecute an action,
18 failure to obey a court order, or failure to comply with local rules. *See, e.g., Ghazali v. Moran*,
19 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v.*
20 *Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order
21 requiring amendment of complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130-33 (9th
22 Cir. 1987) (dismissal for failure to comply with court order).

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

1 Here, the action has been pending for over a year, and Plaintiff's second amended
2 complaint is overdue. Despite multiple attempts to communicate with Plaintiff, he has been non-
3 responsive to the Court's orders. The Court cannot effectively manage its docket if Plaintiff
4 ceases litigating his case. Thus, the Court finds that both the first and second factors weigh in
5 favor of dismissal.

6 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a
7 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.
8 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs
9 against dismissal because public policy favors disposition on the merits. *Pagtalunan v. Galaza*,
10 291 F.3d 639, 643 (9th Cir. 2002). However, "this factor lends little support to a party whose
11 responsibility it is to move a case toward disposition on the merits but whose conduct impedes
12 progress in that direction," which is the case here. *In re Phenylpropanolamine (PPA) Products*
13 *Liability Litigation*, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted).

14 Finally, the court's warning to a party that failure to obey the court's order will result in
15 dismissal satisfies the "considerations of the alternatives" requirement. *Ferdik*, 963 F.2d at 1262;
16 *Malone*, 833 at 132-133; *Henderson*, 779 F.2d at 1424. The Court's August 15, 2016 order
17 expressly warned Plaintiff that his failure to comply with that order would result in a
18 recommendation of dismissal of this action, with prejudice, for failure to state a claim and to
19 obey a court order. (ECF No. 15, p. 2). Plaintiff also was warned of the potential for dismissal
20 by the Court's October 7, 2016 order to show cause. (ECF No. 10). Thus, Plaintiff had adequate
21 warning that dismissal could result from his noncompliance.

22 Additionally, at this stage in the proceedings there is little available to the Court which
23 would constitute a satisfactory lesser sanction while protecting the Court from further
24 unnecessary expenditure of its scarce resources. Plaintiff is proceeding in forma pauperis in this
25 action, making monetary sanctions of little use, and the preclusion of evidence or witnesses is
26 likely to have no effect given that Plaintiff has ceased litigating his case.

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