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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PRAVEEN SINGH, *et al.*,
Plaintiffs,
v.
KIRK BUNCH, *et al.*,
Defendants.

Case No. 1:15-cv-00646-DAD-BAM
**FINDINGS AND RECOMMENDATIONS
TO DISMISS ACTION, WITH
PREJUDICE, FOR FAILURE TO OBEY
COURT ORDERS AND FAILURE TO
PROSECUTE**
(Doc. No. 91)
FOURTEEN-DAY DEADLINE

Plaintiffs Praveen Singh and Joyteshna Karan (“Plaintiffs”) commenced this action on April 27, 2015, alleging claims under the Civil Rights Act, 42 U.S.C. § 1983, the civil RICO statute, and several torts pursuant to state law. (Doc. No. 1). Plaintiffs alleged claims against multiple defendants, including two defendants who were ultimately dismissed because of Plaintiffs’ failure to effectuate service within the time limit provided for under Federal Rule of Civil Procedure 4(m). (See generally, Doc. Nos. 58, 73).

On November 13, 2018, Plaintiffs’ counsel Alejandro Herrera, Esq., failed to appear for a noticed status conference which was set to discuss his failure to provide adequate discovery responses. (Doc. No. 90). As a result of his nonappearance, on November 16, 2018, the Court issued an order to show cause (“OSC”) why sanctions should not be imposed for Plaintiffs’ failure to appear at the status conference. (Doc. No. 91). The order directed Plaintiffs’ counsel

1 to appear in person on November 30, 2018, in large part, because of Plaintiffs’ previous failures
2 to obey Court orders. (Doc. No. 91). The order to show cause was served on Plaintiffs’ counsel
3 at both of his email addresses of record: alex@hessherrera.com and alexherrera@me.com.

4 The matter was heard on November 30, 2018, before the Honorable Barbara A.
5 McAuliffe. The Court waited until 10:10 a.m. to begin the hearing—ten minutes after the
6 scheduled time. (Doc. No. 93). Plaintiffs’ counsel did not appear at the show cause hearing or
7 otherwise contact or communicate with the Court.

8 I. Failure to Prosecute and Failure to Obey a Court Order

9 A. Legal Standards

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

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

26 B. Discussion

27 Here, Plaintiffs have failed to prosecute this action, and Plaintiffs’ counsel has been
28 otherwise non-responsive to the Court’s orders directing him to appear and comply with Court

1 orders. The Court cannot effectively manage its docket if Plaintiffs cease litigating their case.
2 Thus, the Court finds that both the first and second factors weigh in favor of dismissal.

3 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a
4 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.
5 *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). Further, as explained in the Court’s order
6 issuing evidentiary sanctions, Defendants have been prejudiced by Plaintiffs’ conduct. (*See* Doc.
7 No. 92.) The fourth factor usually weighs against dismissal because public policy favors
8 disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002). However,
9 “this factor lends little support to a party whose responsibility it is to move a case toward
10 disposition on the merits but whose conduct impedes progress in that direction,” which is the
11 case here. *In re Phenylpropanolamine (PPA) Prod. Liab. Litig.*, 460 F.3d 1217, 1228 (9th Cir.
12 2006) (citation omitted).

13 Finally, the Court’s warning to a party that failure to obey the Court’s order will result in
14 sanctions satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262;
15 *Malone*, 833 at 132–33; *Henderson*, 779 F.2d at 1424. The Court’s November 16, 2018, order
16 expressly warned Plaintiffs that their failure to respond to the order to show cause or otherwise
17 comply would result in sanctions. (Doc. No. 91 at pp. 2). Thus, Plaintiffs had adequate warning
18 that dismissal could result from their noncompliance.

19 Additionally, at this stage in the proceedings, having already issued extensive evidentiary
20 sanctions, there is little available to the Court that would constitute a satisfactory lesser sanction
21 while protecting the Court from further unnecessary expenditure of its scarce resources. The
22 Court has already issued lesser sanctions for Plaintiffs’ failure to comply with the Court’s order
23 compelling discovery in hopes that the parties could salvage the remaining discovery in this
24 matter and to avoid the harsh sanction of dismissal. (Doc. No. 92). Plaintiffs, however, insist on
25 ignoring the Court’s efforts by failing to appear at the November 13 and November 30, 2018
26 hearings or otherwise prosecute this case. Plaintiffs did not request an extension of time to
27 comply with the Court’s orders, advise the Court that they would not be appearing at the hearing,

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1 or in any way communicate with the Court. Lesser sanctions are therefore of little use and have
2 had no effect as Plaintiffs have ceased litigating their case.

3 **II. Conclusion and Recommendation**

4 For the reasons explained above, the Court **HEREBY RECOMMENDS** that this action
5 be dismissed, with prejudice, for failure to obey a court order and failure to prosecute.

6 These Findings and Recommendation will be submitted to the United States District
7 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
8 fourteen (14) days after being served with these Findings and Recommendation, Plaintiffs may
9 file written objections with the Court. The document should be captioned “Objections to
10 Magistrate Judge’s Findings and Recommendation.” Plaintiffs are advised that failure to file
11 objections within the specified time may result in the waiver of the “right to challenge the
12 magistrate’s factual findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.
13 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

14
15 IT IS SO ORDERED.

16 Dated: December 4, 2018

/s/ Barbara A. McAuliffe
17 UNITED STATES MAGISTRATE JUDGE