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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID TOWNSEL,

Plaintiff,

v.

MADERA COUNTY DEPT PROBATION, et
al.,

Defendants.

Case No. 1:15-cv-00763-LJO-SAB

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSING ACTION
FOR FAILURE TO OBEY COURT ORDER

OBJECTIONS DUE WITHIN FOURTEEN
DAYS

Plaintiff David Townsel, proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on May 19, 2015. The complaint was screened and the undersigned found that it did not state any cognizable claims. On July 8, 2015, District Judge Lawrence J. O’Neill issued an order adopting the magistrate judge’s findings and recommendations, dismissing certain claims and ordering Plaintiff to file an amended complaint within thirty days.

Plaintiff filed a first amended complaint on September 2, 2015. On September 11, 2015, Plaintiff’s first amended complaint was screened and found to not state a cognizable claim. Plaintiff was granted one final opportunity to file an amended complaint to cure the discrepancies identified in the September 11, 2015 order. More than thirty days have passed and Plaintiff has failed to file an amended complaint or otherwise respond to the Court’s September

1 11, 2015 order.

2 Local Rule 110 provides that “[f]ailure of counsel or of a party to comply with these
3 Rules or with any order of the Court may be grounds for imposition by the Court of any and all
4 sanctions . . . within the inherent power of the Court.” The Court has the inherent power to
5 control its docket and may, in the exercise of that power, impose sanctions where appropriate,
6 including dismissal of the action. Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir.
7 2000).

8 A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an
9 action, failure to obey a court order, or failure to comply with local rules. See, e.g. Ghazali v.
10 Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik
11 v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an
12 order to file an amended complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988)
13 (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised
14 of address); Malone v. United States Postal Serv., 833 F.2d 128, 130 (9th Cir. 1987) (dismissal
15 for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir.
16 1986) (dismissal for lack of prosecution and failure to comply with local rules).

17 In determining whether to dismiss an action for failure to comply with a pretrial order,
18 the Court must weigh “(1) the public’s interest in expeditious resolution of litigation; (2) the
19 court’s 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 sanctions.” In re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1226
22 (9th Cir. 2006) (internal quotations and citations omitted). These factors guide a court in
23 deciding what to do, and are not conditions that must be met in order for a court to take action.
24 Id. (citation omitted).

25 In this instance the public’s interest in expeditious resolution of the litigation and the
26 Court’s need to manage its docket weigh in favor of dismissal. Id. Plaintiff was ordered to file
27 an amended complaint within thirty days of September 11, 2015. Plaintiff has been provided
28 with the legal standards that would apply to his claims and the opportunity to file an amended

1 complaint. Plaintiff has neither filed an amended complaint nor otherwise responded to the
2 Court's order. Plaintiff's failure to comply with the orders of the Court hinders the Court's
3 ability to move this action towards disposition, and indicates that Plaintiff does not intend to
4 diligently litigate this action.

5 Since it appears that Plaintiff does not intend to litigate this action diligently there arises a
6 rebuttable presumption of prejudice to the defendants in this action. In re Eisen, 31 F.3d 1447,
7 1452-53 (9th Cir. 1994). This risk of prejudice may be rebutted if Plaintiff offers an excuse for
8 the delay. In re Eisen, 31 F.3d at 1453. The risk of prejudice to the defendants also weighs in
9 favor of dismissal.

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

15 Finally, a court's warning to a party that their failure to obey the court's order will result
16 in dismissal satisfies the "consideration of alternatives" requirement. Ferdik, 963 F.2d at 1262;
17 Malone, 833 at 132-33; Henderson, 779 F.2d at 1424. The Court's May 20, 2014, order
18 requiring Plaintiff to file an amended complaint expressly stated: "If Plaintiff fails to file a second
19 amended complaint in compliance with this order, this action will be dismissed, with prejudice, for
20 failure to state a claim." (ECF No. 15 at 5.) Thus, Plaintiff had adequate warning that dismissal
21 would result from his noncompliance with the Court's order and his failure to state a claim.

22 Accordingly, it is **HEREBY RECOMMENDED** that this action be **DISMISSED**, with
23 prejudice, for Plaintiff's 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 fourteen
26 (14) days of service of this recommendation, any party may file written objections to these
27 findings and recommendations with the Court and serve a copy on all parties. Such a document
28 should be captioned "Objections to Magistrate Judge's Findings and Recommendations." The

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

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6 IT IS SO ORDERED.

7 Dated: October 19, 2015


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UNITED STATES MAGISTRATE JUDGE