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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ERICK D. HENSON,
Plaintiff,
v.
CDCR, et al.,
Defendants.

CASE NO. 1:16-cv-00471-LJO-MJS (PC)
FINDINGS AND RECOMMENDATIONS TO:
(1) GRANT DEFENDANT’S MOTION TO DISMISS (ECF NO. 48); AND
(2) DISMISS ACTION FOR FAILURE TO OBEY COURT ORDER AND FAILURE TO PROSECUTE
FOURTEEN (14) DAY OBJECTION DEADLINE

I. Procedural History

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 28 U.S.C. § 1983. The matter proceeds on Plaintiff’s Fourth Amendment claim against Defendant Dillon.

Before the Court is Defendant’s motion to dismiss. (ECF No. 48.) Plaintiff filed no opposition and the time for doing so has passed. The matter is submitted. Local Rule 230(l).

1 **II. Background**

2 Plaintiff initiated this action on March 28, 2016. (ECF No. 1.) The Court screened
3 his initial complaint and found that it stated a cognizable Fourth Amendment claim
4 against Defendant Dillon but no other cognizable claims. (ECF No. 22.) Plaintiff was
5 ordered to file an amended complaint or notify the Court of his willingness to proceed
6 only on cognizable claims. (Id.) Plaintiff agreed to proceed. (ECF No. 23.) Accordingly,
7 the remaining claims and defendants were dismissed. (ECF No. 24.)

8 Defendant Dillon filed his answer on November 23, 2016 (ECF No. 29), and a
9 discovery and scheduling order issued on November 29, 2016 (ECF No. 33). On
10 February 13, 2017, Defendant filed a motion to compel discovery, stating that Plaintiff
11 had not responded to discovery requests. (ECF No. 41.) Plaintiff filed no opposition. On
12 March 15, 2017, the Court granted in part the motion to compel, reminded Plaintiff of his
13 obligation to respond to discovery requests, and ordered Plaintiff to provide a response
14 within thirty days. (ECF No. 42.) Plaintiff was warned that the failure to comply could
15 result in sanctions, including terminating sanctions. (Id.)

16 On April 19, 2017, Defendant filed a motion to dismiss for lack of prosecution and
17 failure to obey a court order. (ECF No. 48.) Defendant states that Plaintiff has not
18 responded to the order on Defendant's motion to compel, provided any discovery
19 responses, or sought an extension of time to do so. Plaintiff did not respond to the
20 motion.

21 **III. Legal Standard**

22 Local Rule 110 provides that "failure of counsel or of a party to comply with these
23 Rules or with any order of the Court may be grounds for imposition by the Court of any
24 and all sanctions . . . within the inherent power of the Court." District courts have the
25 inherent power to control their dockets and "in the exercise of that power, they may
26 impose sanctions including, where appropriate, default or dismissal." Thompson v.
27 Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with
28 prejudice, based on a party's failure to prosecute, failure to obey a court order, or failure

1 to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)
2 (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-
3 61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of a
4 complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure
5 to comply with local rule requiring pro se plaintiffs to keep court apprised of address);
6 Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to
7 comply with a court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986)
8 (dismissal for lack of prosecution and failure to comply with local rules).

9 In determining whether to dismiss an action for lack of prosecution, failure to obey
10 a court order, or failure to comply with local rules, the Court must consider several
11 factors: (1) the public's interest in expeditious resolution of litigation, (2) the Court's need
12 to manage its docket, (3) the risk of prejudice to the defendants, (4) the public policy
13 favoring disposition of cases on their merits, and (5) the availability of less drastic
14 alternatives. Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone, 833
15 F.2d at 130; Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

16 **IV. Discussion**

17 Plaintiff has disobeyed a Court order requiring him to respond to Defendant's
18 discovery requests. He has failed to respond to Defendant's two most recent motions.
19 He has filed several motions of his own (ECF Nos. 44, 45, 48), two of which (ECF Nos.
20 45 and 48) appear to argue matters relevant to Plaintiff's habeas petition in a separate
21 case.

22 Considering this procedural history, the Court concludes that the public's interest
23 in expeditiously resolving this litigation and the Court's interest in managing its docket
24 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs
25 in favor of dismissal, since a presumption of injury arises from the occurrence of
26 unreasonable delay in prosecuting this action. Anderson v. Air West, 542 F.2d 522, 524
27 (9th Cir. 1976). The fourth factor -- public policy favoring disposition of cases on their
28 merits -- is greatly outweighed by the factors in favor of dismissal discussed herein.

1 Finally, as for the availability of lesser sanctions, at this stage in the proceedings there is
2 little available which would constitute a satisfactory lesser sanction while preserving
3 scarce Court resources. Plaintiff has not paid the filing fee for this action and is likely
4 unable to pay, making monetary sanctions of little use.

5 **V. Conclusion and Recommendation**

6 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 7 1. Defendant's motion to dismiss be GRANTED; and
8 2. The action be dismissed with prejudice for failure to obey a court order and
9 failure to prosecute.

10 The findings and recommendation will be submitted to the United States District
11 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).
12 Within fourteen (14) days after being served with the findings and recommendation, the
13 parties may file written objections with the Court. The document should be captioned
14 "Objections to Magistrate Judge's Findings and Recommendation." A party may respond
15 to another party's objections by filing a response within fourteen (14) days after being
16 served with a copy of that party's objections. The parties are advised that failure to file
17 objections within the specified time may result in the waiver of rights on appeal.
18 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923
19 F.2d 1391, 1394 (9th Cir. 1991)).

20
21 IT IS SO ORDERED.

22 Dated: May 16, 2017

23 /s/ Michael J. Seng
24 UNITED STATES MAGISTRATE JUDGE

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