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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RUPERT FLOWERS,
Plaintiff,
v.
DAVE DAVEY, et al.,
Defendants.

Case No. 1:16-cv-01363-AWI-BAM (PC)
FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF
ACTION, WITH PREJUDICE, FOR FAILURE
TO STATE A CLAIM, FAILURE TO OBEY A
COURT ORDER, AND FAILURE TO
PROSECUTE
(ECF No. 17)
FOURTEEN (14) DAY DEADLINE

Plaintiff Rupert Flowers (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on September 15, 2016. (ECF No. 1.)

On July 14, 2017, the Court issued a screening order dismissing Plaintiff’s first amended complaint with leave to amend within thirty (30) days. (ECF No. 17.) The Court expressly warned Plaintiff that the failure to file an amended complaint in compliance with the Court’s order would result in this action being dismissed for failure to obey a court order and failure to state a claim. (*Id.* at 13.) Plaintiff failed to file an amended complaint or otherwise respond to the Court’s order.

Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with any order of the Court may be grounds for imposition by the Court of any and all sanctions . . .

1 within the inherent power of the Court.” District courts have the inherent power to control their
2 dockets and “[i]n the exercise of that power they may impose sanctions including, where
3 appropriate, . . . dismissal.” Thompson v. Hous. Auth., 782 F.2d 829, 831 (9th Cir. 1986). A
4 court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action,
5 failure to obey a court order, or failure to comply with local rules. See, e.g., Ghazali v. Moran, 46
6 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet,
7 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring
8 amendment of complaint); Malone v. U.S. Postal Serv., 833 F.2d 128, 130–33 (9th Cir. 1987)
9 (dismissal for failure to comply with court order).

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

15 Here, Plaintiff’s amended complaint is overdue, and he has been non-responsive to the
16 Court’s order. The Court cannot effectively manage its docket if Plaintiff ceases litigating his
17 case. Thus, the Court finds that both the first and second factors weigh in favor of dismissal.

18 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a
19 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.
20 Anderson v. Air W., 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against
21 dismissal because public policy favors disposition on the merits. Pagtalunan v. Galaza, 291 F.3d
22 639, 643 (9th Cir. 2002). However, “this factor lends little support to a party whose
23 responsibility it is to move a case toward disposition on the merits but whose conduct impedes
24 progress in that direction,” which is the case here. In re Phenylpropanolamine (PPA) Products
25 Liability Litigation, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted).

26 Finally, the Court’s warning to a party that failure to obey the court’s order will result in
27 dismissal satisfies the “considerations of the alternatives” requirement. Ferdik, 963 F.2d at 1262;
28 Malone, 833 at 132–33; Henderson, 779 F.2d at 1424. The Court’s July 14, 2017 order expressly

1 warned Plaintiff that his failure to file an amended complaint would result in dismissal of this
2 action, with prejudice, for failure to state a claim and failure to obey a court order. (ECF No. 17 at
3 13.) Thus, Plaintiff had adequate warning that dismissal could result from his noncompliance.

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

9 Accordingly, the Court finds that dismissal is the appropriate sanction and HEREBY
10 RECOMMENDS that this action be dismissed, with prejudice, for failure to state a claim, failure
11 to obey a court order, and failure to prosecute.

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

20
21 IT IS SO ORDERED.

22 Dated: September 11, 2017

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