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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MOSES FLORES,)	Case No.: 1:17-cv-00326-AWI-BAM
)	
Plaintiff,)	FINDINGS AND RECOMMENDATIONS
)	REGARDING DISMISSAL OF ACTION,
v.)	WITH PREJUDICE, FOR FAILURE TO
)	STATE A CLAIM, FAILURE TO OBEY A
WESPAK and J.V. FARM LABOR)	COURT ORDER, AND FAILURE TO
SERVICES,)	PROSECUTE
)	
Defendants.)	(Doc. No. 15)
)	
)	FOURTEEN (14) DAY DEADLINE

I. Background

Plaintiff Moses Flores (“Plaintiff”) is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

On July 26, 2018, the Court dismissed Plaintiff’s initial complaint with leave to amend within thirty days after service. (Doc No. 15). Plaintiff was expressly warned that if he failed to file an amended complaint in compliance with the Court’s order, this action would be dismissed for failure to state a claim and failure to obey a court order. (*Id.* at 6.) Thereafter, Plaintiff was granted a thirty-day extension of time to amend his complaint. (Doc. No. 18.) The deadline for Plaintiff to file his amended complaint has passed, and he has not complied with the Court’s order.

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1 **II. Discussion**

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

13
14 In determining whether to dismiss an action, the Court must consider several factors: (1)
15 the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its
16 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
17 cases on their merits; and (5) the availability of less drastic sanctions. *Henderson v. Duncan*,
18 779 F.2d 1421, 1423 (9th Cir. 1986); *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).

19 Here, the action has been pending since March 2017, and Plaintiff’s amended complaint
20 is overdue. Plaintiff has previously been granted an extension of time to file his amended
21 complaint, but despite the Court’s leniency, he has not yet complied with the Court’s July 26,
22 2018 order. Notwithstanding the extension of time, Plaintiff’s amended complaint was due three
23 months ago. The Court cannot hold this case in abeyance awaiting such compliance by Plaintiff.
24 Thus, the Court finds that both the first and second factors weigh in favor of dismissal.

25 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a
26 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.
27 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs
28 against dismissal because public policy favors disposition on the merits. *Pagtalunan v. Galaza*,

1 291 F.3d 639, 643 (9th Cir. 2002). However, “this factor lends little support to a party whose
2 responsibility it is to move a case toward disposition on the merits but whose conduct impedes
3 progress in that direction,” which is the case here. *In re Phenylpropanolamine (PPA) Prods.*
4 *Liab. Litig.*, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted).

5 Finally, the court’s warning to a party that failure to obey the court’s order will result in
6 dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at
7 1262; *Malone*, 833 at 132–33; *Henderson*, 779 F.2d at 1424. The Court’s July 26, 2018, order
8 expressly warned Plaintiff that his failure to comply with that order would result in a dismissal of
9 this action, with prejudice, for failure to state a claim and failure to obey a court order. (Doc.
10 No. 10, p. 11). Thus, Plaintiff had adequate warning that dismissal could result from his
11 noncompliance.

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

17 **III. Conclusion and Recommendations**

18 Accordingly, it is **HEREBY RECOMMENDED** that:

- 19 1. This action be dismissed, with prejudice, for failure to state a claim pursuant to 28
20 U.S.C. § 1915(e)(2);
- 21 2. This action be dismissed for failure to obey the Court’s July 26, 2018 order (Doc.
22 No. 15), and for Plaintiff’s failure to prosecute this action; and

23 These Findings and Recommendations will be submitted to the United States District
24 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
25 fourteen (14) days after being served with these Findings and Recommendations, Plaintiff may
26 file written objections with the Court. The document should be captioned “Objections to
27 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file
28

1 objections within the specified time may result in the waiver of the “right to challenge the
2 magistrate’s factual findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.
3 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).
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5 IT IS SO ORDERED.

6 Dated: November 29, 2018

7 /s/ Barbara A. McAuliffe
8 UNITED STATES MAGISTRATE JUDGE
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