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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MANUEL HERRERA-GARCIA,
Plaintiff,
v.
A. LUCAS,
Defendant.

Case No. 1:17-cv-0635-DAD-MJS (PC)

**FINDINGS AND RECOMMENDATIONS
TO DISMISS ACTION FOR FAILURE TO
OBEY A COURT ORDER, FAILURE TO
PROSECUTE, AND FAILURE TO STATE
A CLAIM**

FOURTEEN (14) DAY DEADLINE

Plaintiff is a prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983.

On September 27, 2017, the Court screened Plaintiff's complaint and dismissed it with thirty days leave to amend. (ECF No. 19.) To date, Plaintiff has not filed an amended complaint, a notice of voluntary dismissal, or a request for additional time.

On November 8, 2017, the Court ordered Plaintiff to, within fourteen (14) days, file either an amended complaint or notice of willingness to proceed, or show cause as to why his action should not be dismissed for failure to prosecute and failure to comply with the Court's Order. (ECF No. 20.) To date, Plaintiff has not filed an amended complaint, a notice of voluntary dismissal, or a request for additional time, or shown cause why the action should not be dismissed.

District courts have the inherent power to control their dockets and "in the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal of a case." Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss

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

10 In determining whether to dismiss an action for lack of prosecution, failure to obey a
11 court order, or failure to comply with local rules, the Court must consider several factors: (1)
12 the public's interest in expeditious resolution of litigation, (2) the Court's need to manage its
13 docket, (3) the risk of prejudice to the defendants, (4) the public policy favoring disposition
14 of cases on their merits, and (5) the availability of less drastic alternatives. Thompson, 782
15 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone, 833 F.2d at 130; Ferdik, 963 F.2d at
16 1260-61; Ghazali, 46 F.3d at 53.

17 In the instant case, the public's interest in expeditiously resolving this litigation and
18 the Court's interest in managing its docket weigh in favor of dismissal. The third factor, risk
19 of prejudice to Defendants, also weighs in favor of dismissal, since a presumption of injury
20 arises from the occurrence of unreasonable delay in prosecuting this action. Anderson v.
21 Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor – public policy favoring
22 disposition of cases on their merits – is greatly outweighed by the factors in favor of
23 dismissal discussed herein. Finally, as for the availability of lesser sanctions, at this stage
24 in the proceedings there is little available which would constitute a satisfactory lesser
25 sanction while preserving scarce Court resources. Plaintiff proceeds in forma pauperis and
26 is therefore most likely indigent, making monetary sanctions of little use.

27 Accordingly, this case should be dismissed.

28 For the foregoing reasons, IT IS HEREBY RECOMMENDED that this action be

1 DISMISSED, with prejudice, for failure to state a claim, failure to obey a court order, and
2 failure to prosecute.

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

11
12 IT IS SO ORDERED.

13 Dated: December 12, 2017

14 /s/ Michael J. Seng
15 UNITED STATES MAGISTRATE JUDGE
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