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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GERALDINE PIERCE,
Plaintiff,
v.
DONALD TRUMP, et al.,
Defendants.

Case No.: 1:17-cv-01603-DAD-BAM

FINDINGS AND RECOMMENDATIONS TO
DISMISS ACTION, WITH PREJUDICE, FOR
FAILURE TO OBEY COURT ORDERS AND
FAILURE TO PROSECUTE

(Doc. No. 3)

FOURTEEN -DAY DEADLINE

Plaintiff Geraldine Pierce, proceeding pro se, initiated this civil action on December 4, 2017, by filing both a complaint and a motion requesting an opportunity to be heard, to e-file, and for judicial notice. (Doc. Nos. 1 and 2.) Plaintiff Geraldine Pierce did not pay the requisite filing fee for the action or an application to proceed in forma pauperis.

On December 7, 2017, the Court determined that neither the complaint nor the accompanying motion was signed by Plaintiff Geraldine Pierce.¹ Therefore, the Court struck the documents from the record and directed Plaintiff Geraldine Pierce, within thirty days following service of the order to (1) file a signed complaint (or notice of voluntary dismissal) and (2) file an application to proceed in forma paupers or pay the \$400 filing fee for this action. (Doc. No. 3.)

¹ The complaint was signed by purported co-plaintiff, Seavon Pierce, a state prisoner, and challenged the dismissal of Mr. Pierce's prior action, Seavon Pierce v. Fernando Gonzales, et al., Case No. 1:10-cv-00285-JLT. As neither the requisite filing fee nor an application to proceed in forma pauperis accompanied the complaint, the Court determined that Mr. Pierce was attempting to avoid the three-strike provisions of 28 U.S.C. § 1915(g) by having Geraldine Pierce file this action. Mr. Pierce was admonished that pleadings and other papers presented for any improper purpose, such as to harass or cause unnecessary delay, may result in the imposition of sanctions pursuant to Federal Rule of Civil Procedure 11. (Doc. No. 3 at p. 2, n. 1.)

1 The Court advised Plaintiff that the failure to comply with the order would result in a
2 recommendation for dismissal of this action, with prejudice, for failure to prosecute and failure to
3 obey a court order. (Id.)

4 The deadline for Plaintiff to file a signed complaint, an application to proceed in forma
5 pauperis or to pay the filing fee has passed, and she has not complied with the Court's order.²
6 Accordingly, the Court will recommend dismissal of this action with prejudice.

7 **I. Failure to Prosecute and Failure to Obey a Court Order**

8 **A. Legal Standards**

9 Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with
10 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . .
11 within the inherent power of the Court.” District courts have the inherent power to control their
12 dockets and “[i]n the exercise of that power they may impose sanctions including, where
13 appropriate, . . . dismissal.” Thompson v. Hous. Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court
14 may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to
15 obey a court order, or failure to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52,
16 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d
17 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring
18 amendment of complaint); Malone v. U.S. Postal Serv., 833 F.2d 128, 130–33 (9th Cir. 1987)
19 (dismissal for failure to comply with court order).

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

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26 _____
27 ² On January 4, 2018, Mr. Seavon Pierce filed a notice in this action indicating that a suit had been filed in
28 the Central District of California against the federal court and against federal judges in Case Number 1:10-
00285(JLT). Mr. Pierce also submitted several exhibits, including a purported summons, an unexecuted proof of
service and a notice of judge assignment for the Central District action. (Doc. No. 4.) Mr. Pierce's filing does not
comply with the Court's December 7, 2017 order.

1 **B. Discussion**

2 Here, Plaintiff’s signed complaint is overdue, and she has been otherwise non-responsive
3 to the Court’s order directing her to file an application to proceed in forma pauperis or pay the
4 filing fee. The Court cannot effectively manage its docket if Plaintiff ceases litigating her case.
5 Thus, the Court finds that both the first and second factors weigh in favor of dismissal.

6 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a
7 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.
8 Anderson v. Air W., 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against
9 dismissal because public policy favors disposition on the merits. Pagtalunan v. Galaza, 291 F.3d
10 639, 643 (9th Cir. 2002). However, “this factor lends little support to a party whose responsibility
11 it is to move a case toward disposition on the merits but whose conduct impedes progress in that
12 direction,” which is the case here. In re Phenylpropanolamine (PPA) Prod. Liab. Litig., 460 F.3d
13 1217, 1228 (9th Cir. 2006) (citation omitted).

14 Finally, the Court’s warning to a party that failure to obey the court’s order will result in
15 dismissal satisfies the “considerations of the alternatives” requirement. Ferdik, 963 F.2d at 1262;
16 Malone, 833 at 132–33; Henderson, 779 F.2d at 1424. The Court’s December 7, 2017 order
17 expressly warned Plaintiff that her failure to file a signed complaint or otherwise comply would
18 result in a recommendation for dismissal of this action, with prejudice, for failure to prosecute
19 and failure to obey a court order. (Doc. No. 3 at pp. 2-3.) Thus, Plaintiff had adequate warning
20 that dismissal could result from her noncompliance.

21 Additionally, at this stage in the proceedings there is little available to the Court that
22 would constitute a satisfactory lesser sanction while protecting the Court from further
23 unnecessary expenditure of its scarce resources. Plaintiff has not filed an operative complaint or
24 responded to the Court, making monetary sanctions of little use, and the preclusion of evidence or
25 witnesses is likely to have no effect given that Plaintiff has ceased litigating her case.

26 **II. Conclusion and Recommendation**

27 For the reasons explained above, the Court HEREBY RECOMMENDS that this action be
28 dismissed, with prejudice, for failure to obey a court order and failure to prosecute.

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

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10 IT IS SO ORDERED.

11 Dated: January 17, 2018

12 /s/ Barbara A. McAuliffe
13 UNITED STATES MAGISTRATE JUDGE
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