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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

HUSSEIN ALI,

Plaintiff,

v.

EXPERIAN INFORMATION SOLUTIONS,
INC.,

Defendant.

Case No. 1:19-cv-00450-AWI-SKO

**FINDINGS AND RECOMMENDATION
TO DISMISS CASE FOR FAILURE TO
PROSECUTE AND OBEY THE
COURT'S ORDERS**

(Docs. 11, 15)

OBJECTIONS DUE: 14 DAYS

On March 5, 2019, Plaintiff Hussein Ali, proceeding *pro se*, filed a complaint against Defendants Trans Union LLC¹ and Experian Information Solutions, Inc., in Fresno County Superior Court. (Doc. 1-1.) On April 5, 2019, Defendant Experian removed the case to this court. (Doc. 1.)

The Court set a Mandatory Scheduling Conference for June 27, 2019, and ordered the parties to file a Joint Scheduling Report by June 20, 2019. (Doc. 2.)

¹ Trans Union was dismissed as a defendant on May 7, 2019, pursuant to the parties' stipulation. (Docs. 6, 7.)

1 On June 27, 2019, Plaintiff failed to appear at the scheduling conference. (Doc. 11.) Thus,
2 the Court continued the scheduling conference to August 8, 2019, and directed the parties to file an
3 updated joint scheduling report by August 1, 2019. (*Id.*) The Court also warned Plaintiff: **“The**
4 **Court ADMONISHES Plaintiff that if he fails to appear without good cause at the scheduling**
5 **conference on August 8, 2019, the Court will recommend to the assigned district judge that**
6 **Plaintiff’s complaint be dismissed for failure to prosecute and failure to comply with a court**
7 **order.”** (*Id.*) (emphasis in original). On August 8, 2019, Plaintiff failed to appear at the Mandatory
8 Scheduling Conference. (*See* Doc. 14.)
9

10 Due to Plaintiff’s failure to appear at the scheduling conference, the Court entered an Order
11 to Show Cause (“OSC”) directing Plaintiff to show cause by August 22, 2019, why the Court should
12 not recommend that the case be dismissed for failure to prosecute and failure to comply with the
13 Court’s orders. (Doc. 15 at 3.) Plaintiff failed to respond to the OSC by August 22, 2019 and has
14 not filed a response to date.
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16 DISCUSSION

17 Local Rule 110 provides that “[f]ailure of counsel or of a party to comply with these Rules
18 or with any order of the Court may be grounds for the imposition by the Court of any and all
19 sanctions . . . within the inherent power of the Court.” E.D. Cal. L.R. 110. District courts have the
20 inherent power to control their dockets and “[i]n the exercise of that power they may impose
21 sanctions, including, where appropriate . . . dismissal.” *Thompson v. Housing Auth.*, 782 F.2d 829,
22 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to
23 prosecute an action, failure to obey a court order, or failure to comply with local rules. *See, e.g.*,
24 *Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule);
25 *Carey v. King*, 856 F.2d 1439, 1440–41 (9th Cir. 1988) (dismissal for failure to comply with local
26 rule requiring pro se plaintiff to keep court apprised of address); *Malone v. U.S. Postal Service*,
27 833 F.2d 128, 130–31 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson*
28 *v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and failure to

1 comply with local rules); *Lopez v. Chase Home Fin.*, No. CVF09-0449 LJO GSA, 2009 WL
2 1098760, at *1 (E.D. Cal. Apr. 20, 2009) (dismissal of certain defendants for failure to comply
3 with court).

4 In determining whether to dismiss an action for failure to obey a court order or failure to
5 comply with the Local Rules, the court must consider several factors, including: “(1) the public’s
6 interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk
7 of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits;
8 and (5) the availability of less drastic sanctions.” *Henderson*, 779 F.2d at 1423–24; *see also Ferdik*,
9 963 F.2d at 1260–61; *Thompson*, 782 F.2d at 831. “The public’s interest in expeditious resolution
10 of litigation always favors dismissal.” *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002)
11 (quoting *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)).

12 Here, the Court finds that the public’s interest in expeditiously resolving this litigation and
13 the Court’s interest in managing the docket weigh in favor of dismissal, as it appears Plaintiff lacks
14 interest in pursuing this case. The third factor, risk of prejudice to Defendant, also weighs in favor
15 of dismissal, since a presumption of injury arises from the occurrence of unreasonable delay in
16 prosecuting an action. *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth
17 factor—public policy favoring disposition of cases on their merits—is greatly outweighed by the
18 factors in favor of dismissal discussed herein. Finally, a court’s warning to a party that the failure
19 to obey the court’s order will result in dismissal satisfies the “consideration of alternatives”
20 requirement. *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424.

21 The June 27, 2019 Order expressly warned Plaintiff that his failure to appear at the August
22 8, 2019 Mandatory Scheduling Conference would result in the undersigned recommending
23 dismissal of this case. (Doc. 11.) The August 8, 2019 OSC expressly ordered Plaintiff to file a
24 statement showing cause why the Court should not recommend to the assigned district judge that
25 this case be dismissed. (Doc. 15 at 3.) Thus, Plaintiff had adequate warning that sanctions, up to
26 and including dismissal of the case, would result from his noncompliance with the OSC. Plaintiff
27 has demonstrated a general lack of concern for court orders throughout the case and the Court has
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1 warned Plaintiff regarding his failure to prosecute this case and follow the Court's Orders. (*See*
2 Docs. 11, 15.)

3 In light of the foregoing, and pursuant to Local Rule 110 and the Court's inherent sanction
4 authority, the undersigned RECOMMENDS that this case be dismissed with prejudice.

5 **CONCLUSION AND RECOMMENDATION**

6 For the reasons set forth above, IT IS HEREBY RECOMMENDED that this action be
7 DISMISSED WITH PREJUDICE based on Plaintiff's failure to obey the Court's Orders of June
8 27, 2019, (Doc. 11), and August 8, 2019, (Doc. 15), and Plaintiff's failure to prosecute the case.

9 The Court further DIRECTS the Clerk to send a copy of this order to Plaintiff at his address
10 listed on the docket for this matter.

11 These findings and recommendations are submitted to the district judge assigned to this
12 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within fourteen (14)
13 days of service of this recommendation, any party may file written objections to these findings and
14 recommendations with the Court and serve a copy on all parties. Such a document should be
15 captioned "Objections to Magistrate Judge's Findings and Recommendations." The district judge
16 will review the magistrate judge's findings and recommendations pursuant to 28 U.S.C. §
17 636(b)(1)(C). The parties are advised that failure to file objections within the specified time may
18 waive the right to appeal the district judge's order. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39
19 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

20
21 IT IS SO ORDERED.

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23 Dated: September 9, 2019

/s/ Sheila K. Oberto
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UNITED STATES MAGISTRATE JUDGE