

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

CALVIN HARRIS,)	Case No.: 1:19-cv-00979-SAB (PC)
)	
Plaintiff,)	
)	ORDER DIRECTING CLERK OF COURT TO
v.)	RANDOMLY ASSIGN A DISTRICT JUDGE TO
)	THIS ACTION
C. WICKERT,)	
)	FINDINGS AND RECOMMENDATION
Defendant.)	RECOMMENDING DISMISSAL OF ACTION
)	
)	(ECF No. 9)
)	
)	

Plaintiff Calvin Harris is appearing *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

On February 4, 2020, the Court screened Plaintiff’s complaint and found that Plaintiff had stated a cognizable claim against Defendant Wickert for violations of the Equal Protection Clause of the Fourteenth Amendment, but failed to state any other cognizable claims. (ECF No. 8.) The Court ordered Plaintiff to either file a first amended complaint, or notify the Court in writing of his willingness to proceed only on the cognizable claim, within thirty (30) days from the date of service of the order. (Id.)

However, Plaintiff failed to respond to the Court’s February 24, 2020 order. Therefore, on March 18, 2020, the Court ordered Plaintiff to show cause in writing within fourteen days why the action should not be dismissed for failure to prosecute and failure to respond to a court order. (ECF No. 9.) Plaintiff has failed to respond to the Court’s March 18, 2020 order. Accordingly, dismissal of the action for failure to prosecute and failure to obey a court order is warranted.

///

1 **I.**

2 **DISCUSSION**

3 Local Rule 110 provides that “failure of counsel or of a party to comply with these Rules or
4 with any order of the Court may be grounds for imposition by the Court of any and all sanctions ...
5 within the inherent power of the Court.” District courts have the inherent power to control their
6 dockets and “in the exercise of that power, they may impose sanctions including, where appropriate,
7 default or dismissal.” Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986).

8 A court may dismiss an action, with prejudice, based on a party’s failure to prosecute, failure
9 to obey a court order, or failure to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52,
10 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d
11 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of a
12 complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply
13 with local rule requiring pro se plaintiffs to keep court apprised of address); Malone v. U.S. Postal
14 Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with a court order);
15 Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and
16 failure to comply with local rules).

17 In determining whether to dismiss an action for lack of prosecution, failure to obey a court
18 order, or failure to comply with local rules, the Court must consider several factors: (1) the public’s
19 interest in expeditious resolution of litigation, (2) the Court’s need to manage its docket, (3) the risk of
20 prejudice to the defendants, (4) the public policy favoring disposition of cases on their merits, and (5)
21 the availability of less drastic alternatives. Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-
22 24; Malone, 833 F.2d at 130; Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

23 Plaintiff has disobeyed a court order requiring him to either file an amended complaint or
24 inform the Court of his intent to proceed solely on the claim found to be cognizable. (ECF No. 8.)
25 Plaintiff has failed to respond to the Court’s order to show cause why the action should not be
26 dismissed. (ECF No. 9.) Considering this procedural history, the Court concludes that the public’s
27 interest in expeditiously resolving this litigation and the Court’s interest in managing its docket weigh
28 in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of

1 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay in
2 prosecuting this action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—
3 public policy favoring disposition of cases on their merits—is greatly outweighed by the factors in
4 favor of dismissal discussed herein. Finally, as for the availability of lesser sanctions, at this stage in
5 the proceedings there is little available which would constitute a satisfactory lesser sanction while
6 preserving scarce Court resources. Plaintiff has not paid the filing fee for this action and is likely
7 unable to pay, making monetary sanctions of little use.

8 **II.**

9 **CONCLUSION AND RECOMMENDATION**

10 Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a
11 Fresno District Judge to this action.

12 Further, IT IS HEREBY RECOMMENDED that the instant action be dismissed for failure to
13 prosecute and failure to obey a court order.

14 This Findings and Recommendation will be submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen (14)**
16 **days** after being served with this Findings and Recommendation, Plaintiff may file written objections
17 with the court. The document should be captioned “Objections to Magistrate Judge’s Findings and
18 Recommendation.” Plaintiff is advised that the failure to file objections within the specified time may
19 result in the waiver of the “right to challenge the magistrate’s factual findings” on appeal. Wilkerson
20 v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir.
21 1991)).

22
23 IT IS SO ORDERED.

24 Dated: April 14, 2020



25 UNITED STATES MAGISTRATE JUDGE