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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHIKEB SADDOZAI,  
Plaintiff,  
v.  
K. HOSEY, et al.,  
Defendants.

Case No. 1:19-cv-01611-DAD-HBK (PC)  
FINDINGS AND RECOMMENDATIONS TO  
DISMISS CASE WITHOUT PREJUDICE FOR  
FAILURE TO PROSECUTE  
FOURTEEN-DAY OBJECTION PERIOD  
(Doc. No. 12)

This matter comes before the Court upon periodic review <sup>1</sup> As more fully set forth below, the undersigned recommends this case be dismissed without prejudice due to Plaintiff’s failure to prosecute this action and timely comply with the Court’s orders.

**I. FACTS AND BACKGROUND**

Plaintiff Shikeb Saddozai, a state prisoner, initiated this action on November 14, 2019 by filing a *pro se* civil rights complaint under 42 U.S.C. § 1983. (Doc. No. 1). The then-assigned magistrate judge granted Plaintiff’s motion to proceed *in forma pauperis* on November 19, 2019. (Doc. No. 5). On March 6, 2020, Plaintiff filed his first amended petition, on which Plaintiff now proceeds. (Doc. No. 12, “FAC”). The FAC generally alleges constitutional violations stemming

<sup>1</sup> This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 (E.D. Ca. 2019).

1 from Defendants handling of Plaintiff's inmate grievances. (*See id.* at 7-12).

2 On April 29, 2020, the then-assigned magistrate judge screened Plaintiff's FAC and found  
3 it failed to state any cognizable claims. (Doc. No. 14 at 2-3). The Court granted Plaintiff 60 days  
4 to file a second amended complaint. (*Id.*). Since that time, Plaintiff has been granted four  
5 extensions of time to file his second amended complaint. In Plaintiff's first motion for extension  
6 of time, Plaintiff stated that receipt of his mail was intentionally delayed by prison officials, that  
7 his access to the law library was limited, and that he lacked legal supplies. (Doc. No. 16 at 1-3).  
8 The Court granted Plaintiff a 90-day extension of time to file his second amended complaint.  
9 (Doc. No. 17). In Plaintiff's second motion for extension of time, Plaintiff stated that he had  
10 limited access to the law library and that the librarian was retaliating against him. (Doc. No. 18 at  
11 1-5). The Court granted Plaintiff a second 90-day extension of time to file his second amended  
12 complaint. (Doc. No. 19). In Plaintiff's third motion for extension of time, Plaintiff stated that he  
13 had limited access to the law library, that prison staff were tampering with his legal mail, and that  
14 his prison was under lockdown and quarantine. (Doc. No. 21 at 1-2). The Court denied  
15 Plaintiff's motion as unripe because it was filed before the previous filing deadline had expired.  
16 (Doc. No. 22). In his fourth motion for extension of time, Plaintiff stated that he was being  
17 denied law library access and legal materials and was suffering from mental and physical  
18 illnesses. (Doc. No. 23 at 2-16). The Court granted Plaintiff an additional 30-day extension of  
19 time to file his second amended complaint. (Doc. No. 26). In his fifth motion for extension of  
20 time, Plaintiff stated that he was being denied law library access and materials, the pandemic  
21 caused law library restrictions, and that prison officials were tampering with Plaintiff's legal mail.  
22 (Doc. No. 29 at 1-3). The Court again granted Plaintiff a further 45-day extension of time, which  
23 set June 7, 2021 as the date Plaintiff's second amended complaint was due to be filed. (Doc. No.  
24 30). Plaintiff has neither filed his second amended complaint nor moved for a further extension  
25 of time. Despite being afforded four extensions of time and 315 days, Plaintiff has failed to file a  
26 second amended complaint. (*See* docket). Accordingly, the Court recommends that the  
27 complaint be dismissed without prejudice for failure to prosecute and failure to comply with a  
28 Court order.

## II. APPLICABLE LAW

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2 Federal Rule of Civil Procedure 41(b) permits the court to involuntarily dismiss an action  
3 when a litigant fails to prosecute an action or fails to comply with other Rules or with a court  
4 order. *See* Fed. R. Civ. P. 41(b); *see Applied Underwriters v. Lichtenegger*, 913 F.3d 884, 889  
5 (9th Cir. 2019) (citations omitted); *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d  
6 683, 689 (9th Cir. 2005) (“[T]he consensus among our sister circuits, with which we agree, is that  
7 courts may dismiss under Rule 41(b) *sua sponte*, at least under certain circumstances.”). Local  
8 Rule 110 similarly permits the court to impose sanctions on a party who fails to comply with the  
9 court’s Rules or any order of the court. Further, the procedural rules that govern this Court are to  
10 be “construed, administered and employed by the court . . . to secure the just, speedy, and  
11 inexpensive determination of every action and proceeding.” Fed. R. Civ. P. 1.

12 Involuntary dismissal is a harsh penalty, but it “is incumbent upon the Court to manage its  
13 docket without being subject to routine noncompliance of litigants.” *Pagtalunan v. Galaza*, 291  
14 F.3d 639, 642 (9th Cir. 2002). Before dismissing an action under Fed. R. Civ. P. 41, the court  
15 *must* consider: (1) the public interest in expeditious resolution of litigation; (2) the court’s need to  
16 manage a docket; (3) the risk of prejudice to defendant; (4) public policy favoring disposition on  
17 the merits; and (5) the availability of less drastic sanctions. *See Applied Underwriters*, 913 F.3d  
18 at 889 (noting that these five factors “must” be analyzed before a Rule 41 involuntarily  
19 dismissal) (emphasis added); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987)  
20 (reviewing five factors and independently reviewing the record because district court did not  
21 make finding as to each); *but see Bautista v. Los Angeles County*, 216 F.3d 837, 841 (9th Cir.  
22 2000) (listing the same, but noting the court *need not* make explicit findings as to each) (emphasis  
23 added); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992) (affirming dismissal of *pro se* §  
24 1983 action when plaintiff did not amend caption to remove “et al” as the court directed and  
25 reiterating that an explicit finding of each factor is not required by the district court).

## III. ANALYSIS

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27 The undersigned considers the above-stated factors and concludes the majority of the  
28 above factors favor dismissal in this case. The expeditious resolution of litigation is deemed to be

1 in the public interest. *Yourish v. California Amplifier*, 191 F.2d 983, 990-91 (9th Cir. 1999).  
2 Turning to the second factor, the Court’s need to efficiently manage its docket cannot be  
3 overstated. This Court has “one of the heaviest caseloads in the nation,” and due to unfilled  
4 judicial vacancies, which is further exacerbated by the Covid-19 pandemic, operates under a  
5 declared judicial emergency. *See Amended Standing Order in Light of Ongoing Judicial*  
6 *Emergency in the Eastern District of California*. The Court’s time is better spent on its other  
7 matters than needlessly consumed managing a case with a recalcitrant litigant. Indeed, “trial  
8 courts do not have time to waste on multiple failures by aspiring litigants to follow the rules and  
9 requirements of our courts.” *Pagtalunan*, 291 F.3d at 644 (Trott, J., concurring in affirmance of  
10 district court’s involuntary dismissal with prejudice of habeas petition where petitioner failed to  
11 timely respond to court order and noting “the weight of the docket-managing factor depends upon  
12 the size and load of the docket, and those in the best position to know what that is are our  
13 beleaguered trial judges.”). Delays have the inevitable and inherent risk that evidence will  
14 become stale or witnesses' memories will fade or be unavailable and can prejudice a defendant,  
15 thereby satisfying the third factor. *See Sibron v. New York*, 392 U.S. 40, 57 (1968). Attempting a  
16 less drastic action, such as allowing Saddozai a fifth extension to file a second amended  
17 complaint, would be futile because Saddozai has been provided multiple extensions and has failed  
18 to do so. Granting an additional extension would inevitably end in the same result. Finally, the  
19 instant dismissal is a dismissal *without* prejudice, which is a lesser sanction than a dismissal with  
20 prejudice, thereby addressing the fifth factor.

21 Over the course of more than a year, Plaintiff has been continually granted extensions of  
22 time to file his second amended complaint. During that time, Plaintiff was able to file objections  
23 to this Court’s findings and recommendations (Doc. No. 18), a motion to appoint counsel (Doc.  
24 No. 21), and a motion for preliminary injunction (Doc. No. 23). Plaintiff was warned by the  
25 Court that a failure to file a timely second amended complaint would result in this Court issuing  
26 findings and recommendations that the case be dismissed. (Doc. No. 14 at 4). Plaintiff has failed  
27 to heed this Court’s warning. Accordingly, after considering the factors set forth *supra* and  
28 binding case law, the undersigned recommends dismissal without prejudice under Fed. R. Civ. P.

1 41 and Local Rule 110.

2 Accordingly, it is **RECOMMENDED**:

3 1. This case be dismissed without prejudice.

4 2. The Clerk of Court be directed to terminate any pending motions/deadlines and close  
5 this case.

6 NOTICE TO PARTIES

7 These findings and recommendations will be submitted to the United States district judge  
8 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen  
9 (14) days after being served with these findings and recommendations, a party may file written  
10 objections with the court. The document should be captioned "Objections to Magistrate Judge's  
11 Findings and Recommendations." Parties are advised that failure to file objections within the  
12 specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834,  
13 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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15 Dated: August 3, 2021

  
16 HELENA M. BARCH-KUCHTA  
17 UNITED STATES MAGISTRATE JUDGE  
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