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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHN C. WASHINGTON,

Plaintiff,

v.

RALPH M. DIAZ, G. NEWSOME, B.
CATES, GREEN, SHARON MCKAY,

Defendants.

Case No. 1:20-cv-00715-HBK (PC)

ORDER DIRECTING CLERK TO ASSIGN
ACTION TO DISTRICT JUDGE

FINDINGS AND RECOMMENDATIONS TO
DISMISS ACTION FOR FAILURE TO
OBEY COURT ORDERS AND FOR
FAILURE TO PROSECUTE¹

14-DAY DEADLINE

Plaintiff John C. Washington is a former state prisoner² proceeding pro se and *in forma pauperis* in this civil rights action. For the reasons set forth below, the undersigned recommends the District Court dismiss this action for Plaintiff’s failure to comply with a court order and failure to prosecute this action.

BACKGROUND

On February 21, 2023, this Court issued a screening order of Plaintiff’s initial Complaint (“Complaint”) finding it failed to state any cognizable claim, and directing Plaintiff to either file an amended complaint, stand on his complaint subject to the Court recommending dismissal, or

¹ This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 (E.D. Cal. 2022).
² On May 24, 2021, Plaintiff filed a notice of change of address indicating he is no longer incarcerated. (Doc. No. 9).

1 voluntarily dismiss the Complaint. (Doc. No. 10 at 1, 7-8). Plaintiff was ordered to respond to
2 the Court within 21 days and advised that if he “fails to timely comply with this Court Order or
3 seek an extension of time to comply, the Court will recommend the district court dismiss this
4 action for Plaintiff’s failure to comply with this Court Order and prosecute this action.” (*Id.* at 8).
5 *See* Local Rule 110; Fed. R. Civ. P. 41(b). Plaintiff has not filed file an amended complaint,
6 provide the Court notice that he either is voluntarily dismissing or standing on the Complaint, has
7 not sought an extension of time, and the time to do so has expired.

8 **APPLICABLE LAW AND ANALYSIS**

9 **A. Legal Standard**

10 Federal Rule of Civil Procedure 41(b) permits the court to involuntarily dismiss an action
11 when a litigant fails to prosecute an action or fails to comply with other Rules or with a court
12 order. *See* Fed. R. Civ. P. 41(b); *see Applied Underwriters v. Lichtenegger*, 913 F.3d 884, 889
13 (9th Cir. 2019) (citations omitted). Similarly, the Local Rules, corresponding with Federal Rule
14 of Civil Procedure 11, provide, “[f]ailure of counsel or of a party to comply with . . . any order of
15 the Court may be grounds for the imposition by the Court of any and all sanctions . . . within the
16 inherent power of the Court.” E.D. Cal. L.R. 110. “District courts have inherent power to control
17 their dockets” and, in exercising that power, may impose sanctions, including dismissal of an
18 action. *Thompson v. Housing Auth., City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A
19 court may dismiss an action based on a party’s failure to prosecute an action, obey a court order,
20 or comply with local rules. *See, e.g., Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
21 (dismissal for failure to comply with a court order to amend a complaint); *Malone v. U.S. Postal*
22 *Service*, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to comply with a court order);
23 *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and
24 to comply with local rules).

25 In determining whether to dismiss an action, the Court must consider several factors:
26 (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its
27 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
28 cases on their merits; and (5) the availability of less drastic sanctions. *Henderson*, 779 F.2d at

1 1423; *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).

2 **B. Analysis**

3 The undersigned considers each of the above-stated factors and concludes dismissal is
4 warranted in this case. The Court’s Screening Order issued February 21, 2023 determined
5 Plaintiff failed to state any cognizable claim. (Doc. 10 at 1). To date, Plaintiff has not responded
6 to the Court’s February 21, 2023 Screening Order.

7 As to the first factor, the expeditious resolution of litigation is deemed to be in the public
8 interest, satisfying the first factor. *Yourish v. California Amplifier*, 191 F.3d 983, 990-91 (9th Cir.
9 1999). Turning to the second factor, the Court’s need to efficiently manage its docket cannot be
10 overstated. This Court has “one of the heaviest caseloads in the nation,” and due to unfilled
11 judicial vacancies, which is further exacerbated by the COVID-19 pandemic, operates under a
12 declared judicial emergency. *See Amended Standing Order in Light of Ongoing Judicial*
13 *Emergency in the Eastern District of California*. The Court’s time is better spent on its other
14 matters than needlessly consumed managing a case with a recalcitrant litigant. The Court cannot
15 effectively manage its docket if Plaintiff ceases litigating her case. Thus, the Court finds that
16 both the first and second factors weigh in favor of dismissal.

17 Delays inevitably have the inherent risk that evidence will become stale or witnesses’
18 memories will fade or be unavailable and can prejudice a defendant, thereby satisfying the third
19 factor. *See Sibron v. New York*, 392 U.S. 40, 57 (1968). Thus, the third factor, risk of prejudice
20 to defendant, also weighs in favor of dismissal since a presumption of injury arises from the
21 occurrence of unreasonable delay in prosecuting an action. *Anderson v. Air W.*, 542 F.2d 522,
22 524 (9th Cir. 1976). Plaintiff’s inaction amounts to an unreasonable delay in prosecuting this
23 action, weighing in favor of dismissal for a risk of prejudice to defendants.

24 Finally, the fourth factor usually weighs against dismissal because public policy favors
25 disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002). However,
26 “this factor lends little support to a party whose responsibility it is to move a case toward
27 disposition on the merits but whose conduct impedes progress in that direction,” which is the case
28 here. *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1228 (9th

1 Cir. 2006) (citation omitted). Indeed, “trial courts do not have time to waste on multiple failures
2 by aspiring litigants to follow the rules and requirements of our courts.” *Pagtalunan v. Galaza*,
3 291 F.3d 639, 644 (9th Cir. 2002) (Trott, J., concurring in affirmance of district court’s
4 involuntary dismissal with prejudice of habeas petition where petitioner failed to timely respond
5 to court order and noting “the weight of the docket-managing factor depends upon the size and
6 load of the docket, and those in the best position to know what that is are our beleaguered trial
7 judges.”). Further, the Court has already found the Complaint did not raise a meritorious claim.

8 Finally, the Court’s warning to a party that failure to obey the court’s order will result in
9 dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262;
10 *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424. The Court’s February 21, 2023 Order
11 expressly warned Plaintiff that his failure to comply with the Court’s order would result in a
12 recommendation for dismissal of this action. (Doc. 10 at 8). Thus, Plaintiff had adequate
13 warning that dismissal could result from his noncompliance. And the instant dismissal is a
14 dismissal *without* prejudice, which is a lesser sanction than a dismissal with prejudice, thereby
15 addressing the fifth factor.

16 After considering the factors set forth *supra* and binding case law, the undersigned
17 recommends dismissal, without prejudice, under Fed. R. Civ. P. 41 and Local Rule 110.

18 Accordingly, it is **ORDERED**:

19 The Clerk of Court randomly assign this case to a District Judge.

20 Accordingly, it is **RECOMMENDED**:

21 This action be **DISMISSED** without prejudice for Plaintiff’s failure to obey court orders
22 and failure to prosecute.


23 **NOTICE**

24 These Findings and Recommendations will be submitted to the United States District
25 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). **Within 14 days**
26 **of the date of service** of these Findings and Recommendations, Plaintiff may file written
27 objections with the Court. The document should be captioned, “Objections to Magistrate Judge’s
28 Findings and Recommendations.” Plaintiff’s failure to file objections within the specified time

1 may result in waiver of her rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.
2 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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Dated: March 31, 2023


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE