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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JHONATHAN FRYE,

Plaintiff,

v.

PFIEFER, Warden, et al.,

Defendants.

Case No.: 1:21-cv-01525-SKO (PC)

**FINDINGS AND RECOMMENDATIONS
TO DISMISS ACTION FOR PLAINTIFF’S
FAILURE TO OBEY COURT ORDERS
AND FAILURE TO PROSECUTE**

14-DAY OBJECTION PERIOD

Clerk of the Court to Assign District Judge

Plaintiff Jhonathan Frye is proceeding pro se and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983.

I. RELEVANT BACKGROUND

Plaintiff filed his first amended complaint on February 9, 2023. (Doc. 10.)

On October 27, 2023, this Court issued its Second Screening Order. (Doc. 11.) The Court found Plaintiff’s first amended complaint stated an Eighth Amendment threat to safety claim against Defendant Rodriguez and First Amendment retaliation claims against Defendants Vasquez and Rodriguez but failed to state a cognizable claim against any other named defendant. (*Id.* at 3-8.) Plaintiff was directed to elect of one three options within 21 days of the date of service of the order: (1) notify the Court he did not wish to file a second amended complaint and was willing to proceed only on his Eighth Amendment claim of a threat to safety against Defendant Rodriguez, and his First Amendment retaliation claims against Defendants Vasquez

1 and Rodriguez, the remaining claims to be dismissed; *or* (2) file a second amended complaint
2 curing the deficiencies identified in the screening order; *or* (3) file a notice of voluntary dismissal.
3 (*Id.* at 8-9.) More than 21 days have passed, and Plaintiff has failed to file a second amended
4 complaint, or a notice to proceed on his cognizable claims or a notice of voluntary dismissal.

5 **II. DISCUSSION**

6 **A. Legal Standards**

7 The Local Rules, corresponding with Federal Rule of Civil Procedure 11, provide,
8 “[f]ailure of counsel or of a party to comply with . . . any order of the Court may be grounds for
9 the imposition by the Court of any and all sanctions . . . within the inherent power of the Court.”
10 Local Rule 110. “District courts have inherent power to control their dockets” and, in exercising
11 that power, may impose sanctions, including dismissal of an action. *Thompson v. Housing Auth.*,
12 *City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a
13 party’s failure to prosecute an action, obey a court order, or comply with local rules. *See, e.g.*,
14 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with a
15 court order to amend a complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130-31 (9th Cir.
16 1987) (dismissal for failure to comply with a court order); *Henderson v. Duncan*, 779 F.2d 1421,
17 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply with local rules).

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

23 **B. Analysis**

24 Here, Plaintiff has failed to respond to the Court’s Second Screening Order. He has
25 neither filed a second amended complaint, nor a notice to proceed only on the cognizable claims
26 or a notice of voluntary dismissal. The Court cannot effectively manage its docket if Plaintiff
27 ceases litigating his case. Thus, the Court finds that both the first and second factors—the public’s
28 interest in expeditious resolution of litigation and the Court’s need to manage its docket—weigh

1 in favor of dismissal. *Carey*, 856 F.2d at 1440.

2 The third factor weighs in favor of dismissal since a presumption of injury arises from the
3 occurrence of unreasonable delay in prosecuting an action. *Anderson v. Air W.*, 542 F.2d 522, 524
4 (9th Cir. 1976). Here, the Court’s October 27, 2023, screening order provided Plaintiff 21 days
5 within which to file a second amended complaint, or a notice to proceed on his cognizable claims,
6 or a notice of voluntary dismissal. Although more than 21 days have passed, Plaintiff has not
7 responded to the Second Screening Order. His inaction amounts to an unreasonable delay in
8 prosecuting this action resulting in a presumption of injury. Therefore, the third factor—a risk of
9 prejudice to defendants—also weighs in favor of dismissal. *Carey*, 856 F.2d at 1440.

10 The fourth factor usually weighs against dismissal because public policy favors
11 disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002). However,
12 “this factor lends little support to a party whose responsibility it is to move a case toward
13 disposition on the merits but whose conduct impedes progress in that direction.” *In re*
14 *Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1228 (9th Cir. 2006)
15 (citation omitted). By failing to comply with the Court’s October 27, 2023, order, or to otherwise
16 contact the Court, Plaintiff is not moving this case forward and is impeding its progress. Thus, the
17 fourth factor—the public policy favoring disposition of cases on their merits—weighs in favor of
18 dismissal. *Carey*, 856 F.2d at 1440.

19 Finally, the Court’s warning to a party that failure to obey the court’s order will result in
20 dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262.
21 The Court’s Second Screening Order stated: “**If Plaintiff fails to comply with this order, the**
22 **Court will recommend that this action be dismissed for failure ... to obey a court order.**”
23 (Doc. 11 at 9.) Further, in the Court’s First Informational Order in Prisoner/Civil Detainee Civil
24 Rights Case, issued October 15, 2021, Plaintiff was advised, in relevant part: “In litigating this
25 action, the parties must comply with this Order, the Federal Rules of Civil Procedure (“Fed. R.
26 Civ. P.”), and the Local Rules of the United States District Court, Eastern District of California
27 (“Local Rules”), as modified by this Order. Failure to so comply will be grounds for imposition
28 of sanctions which may include dismissal of the case. Local Rule 110; Fed. R. Civ. P. 41(b).”

1 (Doc. 2 at 1.) Thus, Plaintiff had adequate warning that dismissal could result from his
2 noncompliance. Therefore, the fifth factor—the availability of less drastic sanctions—also weighs
3 in favor of dismissal. *Carey*, 856 F.2d at 1440.

4 In sum, Plaintiff has failed to comply with the Court’s orders, and in doing so, has failed
5 to prosecute this action. Whether Plaintiff has done so intentionally or mistakenly is
6 inconsequential. It is Plaintiff’s responsibility to comply with the Court’s orders and to prosecute
7 this action. The Court declines to expend its limited resources on a case that Plaintiff has chosen
8 to ignore.

9 **III. CONCLUSION AND RECOMMENDATIONS**

10 The Court **DIRECTS** the Clerk of the Court to assign a district judge to this action.

11 For the reasons given above, the Court **RECOMMENDS** that this action be **DISMISSED**
12 without prejudice for Plaintiff’s failure to obey court orders and failure to prosecute.

13 These Findings and Recommendations will be submitted to the district judge assigned to
14 this case, pursuant to 28 U.S.C. § 636(b)(1). **Within 14 days** of the date of service of these
15 Findings and Recommendations, a party may file written objections with the Court. The
16 document should be captioned, “Objections to Magistrate Judge’s Findings and
17 Recommendations.” Failure to file objections within the specified time may result in waiver of
18 rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*
19 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

20
21 IT IS SO ORDERED.

22 Dated: **November 27, 2023**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE