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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALMA BETTS,

 Plaintiff,

 v.

CPS, et al.,

 Defendants.

No. 2:13-cv-1486 KJM KJN PS

FINDINGS AND RECOMMENDATIONS

Through these findings and recommendations, the undersigned recommends that plaintiff’s case be dismissed with prejudice. Three times plaintiff failed to file an amended pleading despite receiving extra time to do so and despite having been warned of the consequences. For the reasons described below, the undersigned recommends that plaintiff’s case be dismissed pursuant to Federal Rule of Civil Procedure 41(b).

I. BACKGROUND

Plaintiff Alma Betts (“plaintiff”) is proceeding without counsel in this action.¹

On August 9, 2013, the undersigned granted plaintiff’s application to proceed in forma pauperis, dismissed his complaint without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B), and gave her leave to file an amended pleading within 45 days. (ECF No. 3.) The order concluded,

¹ This case proceeds before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

1 “Failure to timely file an amended complaint in accordance with this order will result in a
2 recommendation that this action be dismissed.” (Id. at 11.)

3 Plaintiff failed to file an amended pleading by the 45-day deadline, and the court issued an
4 Order to Show Cause (“OSC”). (OSC, ECF No. 4.) The OSC gave plaintiff an extended deadline
5 of November 30, 2013, in which to file (1) an amended pleading and (2) a writing explaining why
6 the case should not be dismissed given plaintiff’s delay in meeting the court’s deadline. (Id.) The
7 undersigned warned plaintiff that her “*failure to file the required writing and amended*
8 *complaint shall constitute an additional ground for, and plaintiff’s consent to, the imposition*
9 *of appropriate sanctions, including a recommendation that plaintiff’s case be involuntarily*
10 *dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(b) and Local Rules*
11 *110 and 183(a).*” (Id. at 3 (emphasis in original).)

12 On November 26, 2013, plaintiff filed a three-page handwritten document in what
13 appeared to be an attempt to respond to the court’s OSC. (ECF No. 5.) However, in an order
14 issued on January 6, 2014, the court found that this letter did not satisfy the portion of the OSC
15 requiring her to file an amended complaint by November 30, 2013. (ECF No. 6.) In addition, the
16 court noted that plaintiff’s letter indicated that she had never received the court’s August 9, 2013
17 order. (Id. at 2.) Accordingly, the court extended the deadline by which plaintiff was to file an
18 amended complaint to February 6, 2014. (Id. at 3-4.)

19 The deadline of February 6, 2014, has come and gone. Once again, plaintiff has not filed
20 an amended pleading.

21 II. LEGAL STANDARD

22 A court must weigh five factors in determining whether to dismiss a case for failure to
23 prosecute, failure to comply with a court order, or failure to comply with a district court’s local
24 rules. See, e.g., Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992). Specifically, the court
25 must consider:

- 26 (1) the public’s interest in expeditious resolution of litigation; (2) the
27 court’s need to manage its docket; (3) the risk of prejudice to the
28 defendants; (4) the public policy favoring disposition of cases on their
merits; and (5) the availability of less drastic alternatives.

1 Id. at 1260-61; accord Pagtalunan v. Galaza, 291 F.3d 639, 642-43 (9th Cir. 2002); Ghazali v.
2 Moran, 46 F.3d 52, 53 (9th Cir. 1995). The Ninth Circuit Court of Appeals has stated that
3 “[t]hese factors are not a series of conditions precedent before the judge can do anything, but a
4 way for a district judge to think about what to do.” In re Phenylpropanolamine (PPA) Prods.
5 Liab. Litig., 460 F.3d 1217, 1226 (9th Cir. 2006).

6 Eastern District Local Rule 110 provides that “[f]ailure of counsel or of a party to comply
7 with these Rules or with any order of the Court may be grounds for imposition by the Court of
8 any and all sanctions authorized by statute or Rule or within the inherent power of the Court.”
9 Moreover, Eastern District Local Rule 183(a) provides, in part:

10 Any individual representing himself or herself without an attorney
11 is bound by the Federal Rules of Civil or Criminal Procedure, these
12 Rules, and all other applicable law. All obligations placed on
13 “counsel” by these Rules apply to individuals appearing in propria
14 persona. Failure to comply therewith may be ground for dismissal,
15 judgment by default, or any other sanction appropriate under these
16 Rules.

17 See also King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) (“Pro se litigants must follow the
18 same rules of procedure that govern other litigants”) (overruled on other grounds). Case law is in
19 accord that a district court may impose sanctions, including involuntary dismissal of a plaintiff’s
20 case pursuant to Federal Rule of Civil Procedure 41(b), where that plaintiff fails to prosecute his
21 or her case or fails to comply with the court’s orders, the Federal Rules of Civil Procedure, or the
22 court’s local rules. See Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991) (recognizing that a
23 court “may act *sua sponte* to dismiss a suit for failure to prosecute”); Hells Canyon Preservation
24 Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005) (stating that courts may dismiss
25 an action pursuant to Federal Rule of Civil Procedure 41(b) *sua sponte* for a plaintiff’s failure to
26 prosecute or comply with the rules of civil procedure or the court’s orders); Ghazali, 46 F.3d at 53
27 (“Failure to follow a district court’s local rules is a proper ground for dismissal”); Ferdik, 963
28 F.2d at 1260 (“Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss
an action for failure to comply with any order of the court”); Thompson v. Housing Auth. of City
of L.A., 782 F.2d 829, 831 (9th Cir. 1986) (per curiam) (stating that district courts have inherent
power to control their dockets and may impose sanctions including dismissal or default).

1 III. DISCUSSION

2 Although involuntary dismissal can be a harsh remedy, on balance the five relevant Ferdik
3 factors weigh in favor of dismissal of this action. See Ferdik, 963 F.2d at 1260. The first two
4 Ferdik factors strongly support dismissal here. Plaintiff's failures to timely file an amended
5 pleading, despite clear warnings of the consequences (ECF Nos. 3 at 11; 4 at 3; 6 at 4) strongly
6 suggest that plaintiff is not interested in seriously prosecuting this case, or at least, does not take
7 her obligations to the court and other parties seriously. See, e.g., Yourish v. Cal. Amplifier, 191
8 F.3d 983, 990 (9th Cir. 1999) ("The public's interest in expeditious resolution of litigation always
9 favors dismissal"). Any further time spent by the court on this case, which plaintiff has
10 demonstrated a lack of any serious intention to pursue, will consume scarce judicial resources and
11 take away from other active cases. See Ferdik, 963 F.2d at 1261 (recognizing that district courts
12 have inherent power to manage their dockets without being subject to noncompliant litigants).

13 Further, this is not plaintiff's first failure to comply with a court order. When plaintiff
14 initially failed to file an amended pleading after the court's order of August 9, 2013, the court
15 extended plaintiff's deadline to complete such filing and warned plaintiff that another failure to
16 meet the extended deadline would result in a recommendation of dismissal. (ECF No. 4.) Yet
17 plaintiff failed to file an amended pleading by the extended deadline. Plaintiff attempted to
18 respond to the court's October 18, 2013 OSC (ECF No. 5) and, in response to this attempt, the
19 court granted plaintiff additional time to file an amended complaint and further warned her of the
20 possibility of a recommendation that this case be dismissed if she did not timely file.
21 Nevertheless, plaintiff again failed to file an amended pleading by the extended deadline. Despite
22 receiving warnings and multiple chances, plaintiff's failures to comply with court orders
23 demonstrate plaintiff's lack of any serious intention to pursue this case. See Ferdik, 963 F.2d at
24 1261.

25 The third Ferdik factor, prejudice to a defendant, also favors dismissal. Due to the defects
26 within plaintiff's pleading, service of process upon the defendants has not been ordered.
27 Nevertheless, defendants remain named in a lawsuit. It is difficult to quantify the prejudice
28 suffered by defendants here; however, it is enough that defendants have been named in litigation

1 that plaintiff has effectively abandoned. At a minimum, plaintiff's unreasonable delay in
2 prosecuting this action have prevented defendants from attempting to resolve this case on the
3 merits. Unreasonable delay is presumed to be prejudicial. See, e.g., In re Phenylpropanolamine
4 (PPA) Prods. Liab. Litig., 460 F.3d at 1227.

5 The fifth Ferdik factor, which considers the availability of less drastic measures, also
6 supports dismissal of this action. As noted above, the court has actually pursued remedies that
7 are less drastic than a recommendation of dismissal. See Malone v. U.S. Postal Serv., 833 F.2d
8 128, 132 (9th Cir. 1987) (“[E]xplicit discussion of alternatives is unnecessary if the district court
9 actually tries alternatives before employing the ultimate sanction of dismissal”). For instance, the
10 court gave plaintiff multiple opportunities to amend her defective pleading. (ECF Nos. 3, 4, 6.)
11 The court also advised plaintiff that she was required to actively prosecute his action and follow
12 the court's orders. (ECF Nos. 3, 4, 6.) It also repeatedly warned plaintiff in plain terms that
13 failure to comply with court orders and failure to file an amended pleading would result in a
14 recommendation of dismissal. (ECF Nos. 3 at 11; 4 at 3; 6 at 4.) Warning a plaintiff that failure
15 to take steps towards resolution of his or her action will cause the action to be dismissed satisfies
16 the requirement that the court consider alternative measures. See, e.g., Ferdik, 963 F.2d at 1262
17 (“[O]ur decisions also suggest that a district court's warning to a party that his failure to obey the
18 court's order will result in dismissal can satisfy the ‘consideration of alternatives’ requirement”)
19 (citing Malone, 833 F.2d at 132-33).

20 At this juncture, the court finds no suitable alternative to a recommendation that this
21 action be dismissed. Plaintiff failed to file an amended pleading despite having multiple chances
22 to do so (ECF Nos. 3, 4, 6), and in light of plaintiff's in forma pauperis status, the court has little
23 confidence that plaintiff would pay monetary sanctions if they were imposed in lieu of dismissal.
24 Plaintiff disregarded the court's orders to file an amended pleading even though those orders
25 explicitly warned him that failing to do so would result in a recommendation that his case be
26 dismissed. (ECF Nos. 3 at 11; 4 at 3; 6 at 4.)

27 The court also recognizes the importance of giving due weight to the fourth Ferdik factor,
28 which addresses the public policy favoring disposition of cases on the merits. However, for the

1 reasons set forth above, factors one, two, three, and five support a recommendation of dismissal
2 of this action, and factor four does not materially counsel otherwise. Dismissal is proper “where
3 at least four factors support dismissal or where at least three factors ‘strongly’ support dismissal.”
4 Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998) (citations and quotation marks
5 omitted). Under the circumstances of this case, the other relevant factors outweigh the general
6 public policy favoring disposition of actions on their merits. See Ferdik, 963 F.2d at 1263. If
7 anything, a disposition on the merits has been hindered by plaintiff’s own failures to comply with
8 the court’s orders and the rules of litigation procedure.

9 In sum, the court endeavors to give pro se litigants who are unfamiliar with court
10 procedures a fair opportunity to present their cases. As such, the court has given plaintiff several
11 opportunities to amend her defective pleading. Yet plaintiff did not seize upon these
12 opportunities. The court has also provided plaintiff with cautionary instructions and afforded
13 plaintiff some leniency with respect to the litigation. However, at some point, leniency must give
14 way to considerations of limited court resources and fairness to the other compliant litigants.

15 IV. CONCLUSION

16 For the foregoing reasons, IT IS HEREBY RECOMMENDED that:

17 1. This action be dismissed with prejudice pursuant to Federal Rule of Civil
18 Procedure 41(b).

19 2. The Clerk of Court be directed to close this case and vacate all dates.

20 These findings and recommendations are submitted to the United States District Judge
21 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
22 days after being served with these findings and recommendations, any party may file written
23 objections with the court and serve a copy on all parties. Such a document should be captioned
24 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections
25 shall be served on all parties and filed with the court within fourteen (14) days after service of the
26 objections. The parties are advised that failure to file objections within the specified time may

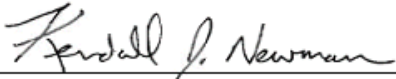
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1 waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th
2 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

3 IT IS SO RECOMMENDED.

4 Dated: February 12, 2014

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7 KENDALL J. NEWMAN
8 UNITED STATES MAGISTRATE JUDGE
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