

1 AND VOLUNTARY DISMISSAL.” (Doc. No. 9.) Therein, plaintiff asserts that the removal of
2 this action from state court was improper, that the “state court still retains jurisdiction over” this
3 action and that “Plaintiff VOLUNTARY (sic) DISMISSES the above-caption (sic) court action
4 pursuant to the Federal Rule of Appellate Procedure Rule 42(a).” (Id. at 2-3.) Plaintiff’s filing,
5 however, is unsigned and therefore is not in compliance with the requirements of Local Rule
6 131(b). In any event, both his failure to take the required actions and his unsigned filing with this
7 court makes it apparent that plaintiff does not intend to prosecute this action.

8 ANALYSIS

9 The factors to be weighed in determining whether to dismiss a case for lack of
10 prosecution are as follows: (1) the public interest in expeditious resolution of litigation; (2) the
11 court’s need to manage its docket; (3) the risk of prejudice to the defendant; (4) the public policy
12 favoring disposition on the merits; and (5) the availability of less drastic sanctions. Hernandez v.
13 City of El Monte, 138 F.3d 393, 398 (9th Cir. 1998); Ferdik v. Bonzelet, 963 F.2d 1258, 1260
14 (9th Cir. 1992); Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988). Dismissal is a harsh penalty
15 that should be imposed only in extreme circumstances. Hernandez, 138 F.3d at 398; Ferdik, 963
16 F.2d at 1260.

17 Under the Local Rules of Practice for the United States District Court for the
18 Eastern District of California, opposition, if any, to the granting of a motion in an action
19 involving a prisoner “shall be served and filed . . . not more than twenty-one (21), days after the
20 date of service of the motion.” Local Rule 230(l). Failure to file an opposition may be deemed a
21 waiver of any opposition and may result in the imposition of sanctions. Id.

22 Failure of a party to comply with the Local Rules or any order of the court “may
23 be grounds for imposition by the Court of any and all sanctions authorized by statute or Rule or
24 within the inherent power of the Court.” Local Rule 110. Any individual representing himself or
25 herself without an attorney is nonetheless bound by the Federal Rules of Civil Procedure, the
26 Local Rules, and all applicable law. Local Rule 183(a). A party’s failure to comply with
27 applicable rules and law may be grounds for dismissal or any other sanction appropriate under the
28 Local Rules. Id.

1 Here, plaintiff has failed to file a timely response to defendant's motion to dismiss
2 in violation of Local Rule 230. The court issued an order to show cause that provided plaintiff
3 with yet another opportunity to show good cause for his failure to respond to defendant's motion.
4 Plaintiff responded to the court's order by indicating that he wishes to voluntarily dismiss this
5 action. Plaintiff's filing, however, was unsigned in violation of Local Rule 131.

6 Plaintiff's lack of prosecution of this case renders the imposition of monetary
7 sanctions futile. Moreover, the public interest in expeditious resolution of litigation, the court's
8 need to manage its docket, and the risk of prejudice to the defendants all support the imposition of
9 the sanction of dismissal. Only the public policy favoring disposition on the merits counsels
10 against dismissal. However, plaintiff's failure to prosecute the action in any way makes
11 disposition on the merits an impossibility. The undersigned will therefore recommend that this
12 action be dismissed due to plaintiff's failure to prosecute as well as his failure to comply with the
13 court's orders and the Local Rules. See FED. R. CIV. P. 41(b).

14 Accordingly, IT IS HEREBY RECOMMENDED that:

- 15 1. Defendant's August 1, 2013 motion to dismiss (Doc. No. 4) be denied as moot;
- 16 2. Plaintiff's claims be dismissed without prejudice due to lack of prosecution, as
17 evidenced by plaintiff's failure to file opposition or a statement of non-opposition to the motion to
18 dismiss and filing indicating that he wishes to voluntarily dismiss this action; and
- 19 3. This case be closed.

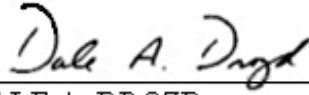
20 These findings and recommendations will be submitted to the United States
21 District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
22 twenty-one (21) days after being served with these findings and recommendations, any party may
23 file written objections with the court.¹ A document containing objections should be titled
24 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to objections
25 shall be filed within seven (7) days after service of the objections. The parties are advised that

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28 ¹ Plaintiff may moot these findings and recommendations by submitting a signed notice of
voluntary dismissal without prejudice prior to the entry of judgment.

1 failure to file objections within the specified time may, under certain circumstances, waive the
2 right to appeal the District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: October 24, 2013

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6 DALE A. DROZD
7 UNITED STATES MAGISTRATE JUDGE

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