

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 ALLEN C. HASSAN,

12 Plaintiff,

13 v.

14 CORELOGIC CREDCO, et al.,

15 Defendants.
16
17
18

No. 2:13-cv-1942-KJM-KJN

ORDER AND

FINDINGS AND RECOMMENDATIONS

19 INTRODUCTION

20 Presently pending before the court are various motions to compel discovery filed by
21 defendants Experian Information Solutions, Inc. (“Experian”) and Corelogic Credco, LLC
22 (“Corelogic”). (ECF Nos. 73, 74, 75, 76, 77.) Additionally, the court previously directed
23 plaintiff Allen Hassan¹ to show cause why the action should not be dismissed based on plaintiff’s
24 purported discovery conduct and failure to prosecute the case. (ECF No. 78.) The court specially
25 set a hearing on the pending motions to compel and the order to show cause for March 5, 2015,
26

27 ¹ Although plaintiff represents himself in this action, plaintiff is a licensed attorney admitted to
28 the bar of this court and in active status with the California Bar. As such, this action has not been
designated as a *pro se* action.

1 and plaintiff was ordered to personally appear at the hearing. (Id.)

2 Plaintiff failed to file any response to the motions to compel or the court's order to show
3 cause. At the March 5, 2015 hearing, attorney Heather Herd appeared in person on behalf of
4 Corelogic, Ann Rossum appeared telephonically on behalf of Experian, and Monica Katz-Lapides
5 appeared telephonically on behalf of non-moving defendant Trans Union, LLC ("Trans Union").²
6 Significantly, plaintiff failed to appear at the hearing.

7 For the reasons discussed below, the court now recommends that the action be dismissed
8 with prejudice pursuant to Federal Rule of Civil Procedure 41(b) based on plaintiff's discovery
9 conduct, failure to prosecute the case, and failure to comply with the Local Rules and court
10 orders.

11 BACKGROUND

12 According to the operative first amended complaint, plaintiff, a licensed attorney, doctor,
13 and veterinarian, alleges that the United States Office of Foreign Assets Control ("OFAC")
14 improperly put plaintiff on a designated terrorist list based on his Palestinian descent. Plaintiff
15 asserts that several credit or consumer reporting agencies, including defendants Corelogic,
16 Equifax, Experian, and Trans Union, then reported plaintiff's alleged listing as a designated
17 terrorist on credit reports issued to lenders, banks, and other entities, resulting in plaintiff being
18 denied credit, losing properties, losing income, being driven into bankruptcy, and losing his
19 reputation in the medical and legal communities. Plaintiff contends that the credit agencies failed
20 to follow reasonable procedures and conduct proper investigations to ensure the accuracy of the
21 information in their credit reports, failed to delete inaccurate information from their credit reports,
22 and relied on sources known to be unreliable. The first amended complaint asserts claims for
23 violations of the federal Fair Credit Reporting Act, as well as state statutory and common law tort
24 claims, against defendants Corelogic, Equifax, Experian, and Trans Union. (See generally ECF
25 No. 38.) Plaintiff previously also named OFAC, Adam Szubin (as director of OFAC), and Eric
26 Holder (as Attorney General of the United States) as defendants, but they were dismissed from

27 ² Non-moving defendant Equifax Inc. ("Equifax") did not appear at the hearing.
28

1 the case with prejudice on February 10, 2014. (ECF No. 28.)

2 On November 20, 2014, after all remaining defendants answered the first amended
3 complaint (ECF Nos. 43, 44, 46, 59), the assigned district judge issued a pretrial scheduling order
4 requiring initial disclosures to be completed within fourteen (14) days, i.e., by December 4, 2014.
5 (ECF No. 67.) The pretrial scheduling order also requires discovery to be completed by March
6 27, 2015. (Id.) The order explains that the word “completed” means that “all discovery shall
7 have been conducted so that all depositions have been taken and any disputes relative to
8 discovery shall have been resolved by appropriate order if necessary and, where discovery has
9 been ordered, the order has been obeyed.” (Id.)

10 On February 12, 2015, Experian filed a motion to compel plaintiff’s responses to
11 Experian’s interrogatories and requests for production of documents. (ECF No. 73.) The
12 interrogatories and requests for production of documents were served on December 2, 2014, but
13 to date, no written responses or responsive documents have been provided. According to
14 Experian, plaintiff also failed to respond to Experian’s counsel’s attempts to meet and confer via
15 e-mail and letter concerning the outstanding discovery responses. (See ECF No. 73-2.)³ In light
16 of plaintiff’s complete failure to respond to Experian’s discovery requests, and pursuant to Local
17 Rule 251(e), the motion was noticed for hearing on February 26, 2015 (on 14 days’ notice),
18 requiring any response to the motion to be filed not later than seven (7) days before the hearing
19 date, i.e., by February 19, 2015. See L.R. 251(e). Plaintiff failed to respond to Experian’s motion
20 by that deadline.

21 Furthermore, on February 13, 2015, Corelogic filed motions to compel plaintiff’s
22 responses to its requests for production of documents and two sets of interrogatories, as well as a
23 motion to compel plaintiff to provide initial disclosures in accordance with the district judge’s
24 scheduling order. (ECF Nos. 74, 75, 76, 77.) Corelogic also seeks preclusion sanctions. (ECF

25 ³ The only communication from plaintiff was a telephone call on February 3, 2015, from
26 plaintiff’s paralegal to Experian’s counsel’s secretary, requesting that another copy of Experian’s
27 interrogatories be sent to plaintiff by fax. Another copy was provided the next day. (ECF No.
28 73-2.) At the March 5, 2015 hearing, Experian’s counsel confirmed that she had had no further
communication from plaintiff concerning the outstanding discovery.

1 No. 77.) Those motions were initially set for hearing on March 26, 2015. According to
2 Corelogic, its requests for production of documents and first set of interrogatories were served on
3 December 1, 2014, and the second set of interrogatories were served on December 5, 2014, but to
4 date, no written responses or responsive documents have been provided. Furthermore, Corelogic
5 asserts that plaintiff failed to substantively respond to Corelogic's efforts to meet and confer by
6 letter and telephone. (See ECF Nos. 74-2, 75-2, 76-2, 77-2.)⁴

7 In light of plaintiff's discovery conduct thus far, plaintiff's failure to respond to
8 Experian's motion in accordance with the Local Rules, and the imminently approaching March
9 27, 2015 fact discovery completion deadline, the court on February 23, 2015 continued the
10 February 26, 2015 hearing on Experian's motion, and advanced the March 26, 2015 hearing on
11 Corelogic's motions, to March 5, 2015. (ECF No. 78.) Plaintiff was directed to file a response to
12 the pending motions to compel no later than March 2, 2015, at 5:00 p.m. (Id.) Plaintiff was
13 further ordered to show cause, in writing, why the action should not be dismissed based on
14 plaintiff's discovery conduct and failure to prosecute the case, with plaintiff's response to the
15 order to show cause due no later than March 2, 2015, at 5:00 p.m. (Id.) Finally, plaintiff was
16 ordered to appear in person at the March 5, 2015 hearing. (Id.) The order specifically cautioned
17 plaintiff that "[f]ailure to strictly comply with the terms and deadlines of this order may result in
18 the imposition of sanctions, including a recommendation of dismissal of the action pursuant to
19 Federal Rule of Civil Procedure 41(b)." (Id.)

20 By issuing the February 23, 2015 order and order to show cause, and setting the March 5,
21 2015 hearing, the court hoped to: (a) provide plaintiff with an opportunity to explain his conduct
22 thus far in person; (b) impress upon plaintiff the importance of complying with court procedures
23

24 ⁴ Corelogic indicates that plaintiff left Corelogic's counsel a voicemail message on January 28,
25 2015, stating that plaintiff intended to respond to the interrogatories and requesting a return call.
26 However, Corelogic was subsequently unable to reach plaintiff on the phone. Additionally, on
27 February 3, 2015, plaintiff's office again contacted the office of Corelogic's counsel, requesting
28 another copy of the interrogatories, which was forwarded to plaintiff's office that same day. (See
ECF Nos. 74-2, 75-2, 76-2, 77-2.) At the March 5, 2015 hearing, Corelogic's counsel confirmed
that she had had no further communication from plaintiff concerning the outstanding discovery.

1 and deadlines; and (c) attempt to salvage discovery in this matter and to avoid the harsh sanction
2 of dismissal.

3 However, as noted above, plaintiff ultimately spurned the court's efforts by failing to
4 respond to the pending motions to compel as required by the court's order, failing to respond to
5 the court's order to show cause, and failing to appear at the March 5, 2015 hearing.⁵ Plaintiff did
6 not request an extension of time to comply with the court's orders, even advise the court that he
7 would not be appearing at the hearing, or in any way communicate with the court.⁶

8 DISCUSSION

9 In light of the above events, the court recommends dismissal of the action with prejudice
10 pursuant to Federal Rule of Civil Procedure 41(b) and Local Rules 110 and 183.

11 Eastern District Local Rule 110 provides that "[f]ailure of counsel or of a party to comply
12 with these Rules or with any order of the Court may be grounds for imposition by the Court of
13 any and all sanctions authorized by statute or Rule or within the inherent power of the Court."

14 Moreover, Eastern District Local Rule 183(a) provides, in part:

15 Any individual representing himself or herself without an attorney
16 is bound by the Federal Rules of Civil or Criminal Procedure, these
17 Rules, and all other applicable law. All obligations placed on
"counsel" by these Rules apply to individuals appearing in propria

18 ⁵ Thus far, the court's orders have not been returned to the court as undeliverable. Nevertheless,
19 even if they had been, it is plaintiff's duty to keep the court informed of his current address, and
20 service of the court's orders at the address on record was effective absent the filing of a notice of
21 change of address. In relevant part, Local Rule 182(f) provides: "Each appearing attorney and
22 pro se party is under a continuing duty to notify the Clerk and all other parties of any change of
23 address or telephone number of the attorney or the pro se party. Absent such notice, service of
24 documents at the prior address of the attorney or pro se party shall be fully effective."

25 ⁶ At the March 5, 2015 hearing, Trans Union's counsel informed the court that, although Trans
26 Union had not moved to compel, plaintiff's discovery responses to Trans Union are likewise
27 overdue by several months. The day before the hearing, Equifax also filed a joinder in the
28 pending motions to compel, indicating that plaintiff had thus far failed to respond to various
discovery requests propounded by Equifax in May of 2014, and that plaintiff had also failed to
respond to Equifax's written correspondence and phone calls concerning the outstanding
discovery. (See ECF No. 81.) Although the contentions by Trans Union and Equifax, which
appear consistent with the contentions of the other defendants, would further support the court's
recommendation of dismissal, the court does not base its recommendation on such contentions,
because they were not made in the context of a properly-noticed motion to which plaintiff had an
opportunity to respond.

1 persona. Failure to comply therewith may be ground for dismissal,
2 judgment by default, or any other sanction appropriate under these
Rules.

3 See also King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) (“Pro se litigants must follow the
4 same rules of procedure that govern other litigants”) (overruled on other grounds). Case law is in
5 accord that a district court may impose sanctions, including involuntary dismissal of a plaintiff’s
6 case pursuant to Federal Rule of Civil Procedure 41(b), where that plaintiff fails to prosecute his
7 or her case or fails to comply with the court’s orders, the Federal Rules of Civil Procedure, or the
8 court’s local rules. See Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991) (recognizing that a
9 court “may act sua sponte to dismiss a suit for failure to prosecute”); Hells Canyon Preservation
10 Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005) (stating that courts may dismiss
11 an action pursuant to Federal Rule of Civil Procedure 41(b) sua sponte for a plaintiff’s failure to
12 prosecute or comply with the rules of civil procedure or the court’s orders); Ghazali v. Moran, 46
13 F.3d 52, 53 (9th Cir. 1995) (per curiam) (“Failure to follow a district court’s local rules is a
14 proper ground for dismissal”); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992)
15 (“Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss an action for
16 failure to comply with any order of the court”); Thompson v. Housing Auth. of City of L.A., 782
17 F.2d 829, 831 (9th Cir. 1986) (per curiam) (stating that district courts have inherent power to
18 control their dockets and may impose sanctions including dismissal or default).

19 A court must weigh five factors in determining whether to dismiss a case for failure to
20 prosecute, failure to comply with a court order, or failure to comply with a district court’s local
21 rules. See, e.g., Ferdik, 963 F.2d at 1260. Specifically, the court must consider:

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

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

1 Liab. Litig., 460 F.3d 1217, 1226 (9th Cir. 2006). Although involuntary dismissal can be a harsh
2 remedy, on balance the five relevant factors weigh in favor of dismissal of this action.

3 Here, the first two Ferdik factors strongly support dismissal. As outlined above, plaintiff
4 has failed to respond to numerous discovery requests, failed to provide initial disclosures in
5 accordance with the district judge's order, failed to respond to defendants' motions to compel in
6 accordance with the Local Rules and the court's order, failed to respond to the court's order to
7 show cause, and failed to appear in person at the March 5, 2015 hearing as ordered by the court.
8 Indeed, it appears that plaintiff has little interest in prosecuting this action and following court
9 rules and orders, and has effectively abandoned the action. Plaintiff's conduct is particularly
10 egregious, because, even though he represents himself, he is a member of this court's bar and a
11 licensed attorney in active status with the California Bar. Thus, the public's interest in
12 expeditious resolution of litigation and the court's need to manage its docket strongly militate in
13 favor of dismissal.

14 The third Ferdik factor, prejudice to the defendants, also favors dismissal. Plaintiff's
15 failure to respond to written discovery has significantly hampered defendants' efforts to ascertain
16 and understand the basis of plaintiff's claims, and develop their defenses in the case, particularly
17 given the impending March 27, 2015 discovery completion deadline. Defendants assert that they
18 are unable to effectively depose plaintiff without having received at least some written discovery
19 responses, and that insufficient time remains to get all discovery completed. Unreasonable delay
20 is presumed to be prejudicial. See, e.g., In re Phenylpropanolamine (PPA) Prods. Liab. Litig.,
21 460 F.3d at 1227.

22 The fifth Ferdik factor, which considers the availability of less drastic measures, also
23 supports dismissal of this action. Here, the court has actually pursued remedies that are less
24 drastic than a recommendation of dismissal. See Malone v. U.S. Postal Serv., 833 F.2d 128, 132
25 (9th Cir. 1987) ("[E]xplicit discussion of alternatives is unnecessary if the district court actually
26 tries alternatives before employing the ultimate sanction of dismissal"). As outlined above, the
27 court attempted to salvage discovery and avoid dismissal by setting the March 5, 2015 hearing, at
28 which the court anticipated assisting the parties with scheduling future discovery in an effort to

1 complete discovery prior to the discovery completion deadline. Additionally, the court issued an
2 order to show cause, providing plaintiff with an opportunity to explain his past failures in writing
3 and in person at the hearing. As noted above, plaintiff neither responded to the court's orders nor
4 appeared at the March 5, 2015 hearing, despite the court's clear cautionary instruction that failure
5 to comply may result in dismissal of the action. See, e.g., Ferdik, 963 F.2d at 1262 (“[O]ur
6 decisions also suggest that a district court's warning to a party that his failure to obey the court's
7 order will result in dismissal can satisfy the ‘consideration of alternatives’ requirement”) (citing
8 Malone, 833 F.2d at 132-33). Furthermore, the court has carefully considered whether lesser
9 sanctions, such as monetary sanctions, may be effective in this case. However, because plaintiff
10 has entirely ignored the court's orders thus far, the court has no reason to believe that plaintiff
11 would pay any monetary sanctions if ordered to do so. As such, the imposition of monetary
12 sanctions would be futile. In any event, monetary sanctions would do little to address the
13 potential prejudice to defendants resulting from plaintiff's actions.

14 The court also recognizes the importance of giving due weight to the fourth Ferdik factor,
15 which addresses the public policy favoring disposition of cases on the merits. However, for the
16 reasons set forth above, factors one, two, three, and five support a recommendation of dismissal
17 of this action, and factor four does not materially counsel otherwise. Dismissal is proper “where
18 at least four factors support dismissal or where at least three factors ‘strongly’ support dismissal.”
19 Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998) (citations and quotation marks
20 omitted). Under the circumstances of this case, the other relevant factors outweigh the general
21 public policy favoring disposition of actions on their merits. See Ferdik, 963 F.2d at 1263. If
22 anything, a disposition on the merits has been hindered by plaintiff's own failure to comply with
23 the court's orders, the Local Rules, and the Federal Rules of Civil Procedure.

24 CONCLUSION

25 Accordingly, for the reasons outlined above, IT IS HEREBY RECOMMENDED that:

- 26 1. The action be dismissed with prejudice pursuant to Federal Rule of Civil Procedure
27 41(b).
- 28 2. The Clerk of Court be directed to close this case.


1 IT IS ALSO HEREBY ORDERED that:

- 2 1. The pending motions to compel (ECF Nos. 73, 74, 75, 76, 77) be denied without
3 prejudice as moot.
- 4 2. In the event that the case is not ultimately dismissed, defendants may renew their
5 motions to compel, at which point the court may also revisit the issue of monetary or
6 other appropriate sanctions.

7 These findings and recommendations are submitted to the United States District Judge
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
9 days after being served with these findings and recommendations, any party may file written
10 objections with the court and serve a copy on all parties. Such a document should be captioned
11 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
12 shall be served on all parties and filed with the court within fourteen (14) days after service of the
13 objections. The parties are advised that failure to file objections within the specified time may
14 waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th
15 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

16 IT IS SO ORDERED AND RECOMMENDED.

17 Dated: March 5, 2015

18 
19 _____
20 KENDALL J. NEWMAN
21 UNITED STATES MAGISTRATE JUDGE
22
23
24
25
26
27
28