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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 WESLEY ELVIS PEDEN,

12 Plaintiff,

13 v.

14 COMMISSIONER OF SOCIAL
15 SECURITY,

16 Defendant.

No. 2:14-cv-0061-KJN PS

ORDER

17 Plaintiff Wesley Elvis Peden, proceeding without counsel and *in forma pauperis*,
18 commenced this social security action on January 10, 2014. (ECF No. 1.)¹ On September 5,
19 2014, the court issued an order which directed plaintiff to pay the Clerk of Court \$100.00 in
20 monetary sanctions based on his failure to comply with court orders and failure to appear at a
21 court-ordered hearing. (ECF No. 15.)² The order also directed plaintiff to show cause in writing
22 why this action should not be dismissed with prejudice pursuant to Federal Rule of Civil
23 Procedure 41(b) based on plaintiff's failure to comply with court orders and failure to appear at a
24 court-ordered hearing. (*Id.*) The order set a deadline of September 19, 2014, to pay the monetary

25 ¹ This case was referred to the undersigned pursuant to E.D. Cal. L.R. 302(c)(15). Both parties
26 consented to proceed before a United States Magistrate Judge for all further proceedings and
27 entry of final judgment pursuant to 28 U.S.C. § 636(c). (ECF Nos. 13, 16.)

28 ² The details regarding plaintiff's previous failures are outlined in the court's September 5, 2014
order. (See ECF No. 15.)

1 sanctions and file a response to the order to show cause. (Id.) In imposing the minimal monetary
2 sanctions of \$100.00 at issue, the court reasoned as follows:

3 In light of plaintiff's numerous failures, the court has considered
4 whether the case should presently be dismissed pursuant to Federal
5 Rule of Civil Procedure 41(b). However, given the court's desire to
6 resolve the action on its merits, and because plaintiff has apparently
7 now at least submitted the documents to the U.S. Marshal, the court
8 finds that lesser monetary sanctions are more appropriate at this
9 juncture. In imposing monetary sanctions, the court is cognizant of
10 the fact that plaintiff is proceeding *in forma pauperis*. For that
11 reason, the court first issued several instructional orders and granted
12 plaintiff multiple extensions to avoid the imposition of sanctions.
13 Nevertheless, at this point, it appears that sanctions are necessary to
14 encourage plaintiff to take the court's rules, orders, and deadlines
15 seriously. Given plaintiff's *in forma pauperis* status, however, the
16 amount of monetary sanctions imposed will be minimal.

17 (Id. at 3-4.)

18 Plaintiff ultimately failed to pay the \$100.00 in monetary sanctions by the required
19 deadline. However, on September 17, 2014, plaintiff filed what could liberally be construed as
20 responses to the court's order to show cause. (ECF Nos. 16, 17.) Plaintiff's filings largely
21 accused the Commissioner of perjury, fraud, and criminal offenses, and did not address plaintiff's
22 own failure to comply with court orders and failure to appear at a court-ordered hearing. Plaintiff
23 also objected to the monetary sanctions imposed on the basis that he had no income.

24 On October 14, 2014, the court issued an order declining to vacate the prior order
25 imposing monetary sanctions, explaining that:

26 Monetary sanctions were imposed only after the court, in light of
27 plaintiff's *pro se* status, issued several instructional orders, granted
28 multiple extensions, and scheduled a court hearing to personally
discuss plaintiff's obligations with him, which plaintiff then failed
to attend without any notice to the court. Furthermore, fully
cognizant of plaintiff's *in forma pauperis* status, the court only
imposed minimal monetary sanctions of \$100.00 in an attempt to
avoid the otherwise harsh sanction of dismissal. Moreover,
plaintiff's responses to the order to show cause did not even attempt
to meaningfully address plaintiff's previous failures.

Nevertheless, in a final attempt to both avoid dismissal and
accommodate plaintiff's financial status, the court will permit
plaintiff to pay the monetary sanctions in installments of \$20.00,
with \$20.00 to be paid to the Clerk of Court on each of the
following dates: November 3, 2014; December 3, 2014; January 5,
2015; February 5, 2015; and March 5, 2015. Failure to timely

1 make any of these individual installment payments will result in
2 dismissal of the action pursuant to Federal Rule of Civil Procedure
3 41(b).

4 (ECF No. 18.)

5 Although the deadline for the first installment payment has now passed, plaintiff failed to
6 make that \$20 installment payment. At this juncture, the court concludes that dismissal is
7 appropriate.

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

11 Case law is in accord that a district court may impose sanctions, including involuntary
12 dismissal of a plaintiff’s case pursuant to Federal Rule of Civil Procedure 41(b), where that
13 plaintiff fails to prosecute his or her case or fails to comply with the court’s orders, the Federal
14 Rules of Civil Procedure, or the court’s local rules. See Chambers v. NASCO, Inc., 501 U.S. 32,
15 44 (1991) (recognizing that a court “may act sua sponte to dismiss a suit for failure to
16 prosecute”); Hells Canyon Preservation Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir.
17 2005) (stating that courts may dismiss an action pursuant to Federal Rule of Civil Procedure 41(b)
18 sua sponte for a plaintiff’s failure to prosecute or comply with the rules of civil procedure or the
19 court’s orders); Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam) (“Failure to follow
20 a district court’s local rules is a proper ground for dismissal”); Ferdik v. Bonzelet, 963 F.2d 1258,
21 1260 (9th Cir. 1992) (“Pursuant to Federal Rule of Civil Procedure 41(b), the district court may
22 dismiss an action for failure to comply with any order of the court”); Thompson v. Housing Auth.
23 of City of L.A., 782 F.2d 829, 831 (9th Cir. 1986) (per curiam) (stating that district courts have
24 inherent power to control their dockets and may impose sanctions including dismissal or default).

25 A court must weigh five factors in determining whether to dismiss a case for failure to
26 prosecute, failure to comply with a court order, or failure to comply with a district court’s local

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1 rules. See, e.g., Ferdik, 963 F.2d at 1260. Specifically, the court must consider:

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

5 Id. at 1260-61; accord Pagtalunan, 291 F.3d at 642-43; Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir.
6 1995). The Ninth Circuit Court of Appeals has stated that “[t]hese factors are not a series of
7 conditions precedent before the judge can do anything, but a way for a district judge to think
8 about what to do.” In re Phenylpropanolamine (PPA) Prods. Liab. Litig., 460 F.3d 1217, 1226
9 (9th Cir. 2006).

10 Here, the first two Ferdik factors support dismissal. Plaintiff failed to comply with several
11 court orders and failed to appear at a court-ordered hearing, resulting in significant delay to this
12 case. The third Ferdik factor, prejudice to defendants, also favors dismissal. At the very least,
13 the Commissioner has been named in a civil action and has had progress towards resolution of the
14 case delayed by plaintiff’s actions.

15 The fifth Ferdik factor, availability of less drastic alternatives, also favors dismissal.
16 Before employing the harsh sanction of dismissal, the court first issued instructional orders,
17 granted extensions, and scheduled a court hearing to personally discuss plaintiff’s obligations
18 with him, which plaintiff then failed to attend without any notice to the court. Then, fully
19 cognizant of plaintiff’s *in forma pauperis* status, the court only imposed minimal monetary
20 sanctions of \$100.00, and even later modified the order to permit payment of such sanctions in
21 installments of \$20.00. Because plaintiff has now also failed to pay the first installment payment
22 of the sanctions, the court finds no feasible alternative to dismissal.

23 The court also recognizes the importance of giving due weight to the fourth Ferdik factor,
24 which addresses the public policy favoring disposition of cases on the merits. However, for the
25 reasons set forth above, factors one, two, three, and five support dismissal of this action, and
26 factor four does not materially counsel otherwise. Dismissal is proper “where at least four factors
27 support dismissal or where at least three factors ‘strongly’ support dismissal.” Hernandez v. City
28 of El Monte, 138 F.3d 393, 399 (9th Cir. 1998) (citations and quotation marks omitted). Under

1 the circumstances of this case, the other relevant factors outweigh the general public policy
2 favoring disposition of actions on their merits. See Ferdik, 963 F.2d at 1263. If anything, a
3 disposition on the merits has been hindered by plaintiff's own failure to comply with the court's
4 orders and instructions.


5 Therefore, after an evaluation of all the Ferdik factors, the court finds that plaintiff's case
6 should be dismissed.

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. The action is dismissed pursuant to Federal Rule of Civil Procedure 41(b).
- 9 2. The Clerk of Court shall vacate all dates and close this case.

10 IT IS SO ORDERED.

11 Dated: November 5, 2014

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13 KENDALL J. NEWMAN
14 UNITED STATES MAGISTRATE JUDGE
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