

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GLENN MATHEW CAMPBELL,
Plaintiff,
v.
ARLEEN ELBERG, et al.,
Defendants.

No. 2:14-cv-0222-JAM-KJN PS

FINDINGS AND RECOMMENDATIONS

Plaintiff Glenn Mathew Campbell, who proceeds without counsel, commenced this action on January 23, 2014, and paid the filing fee. (ECF No. 1.)

On January 24, 2014, the court issued an “Order Setting Status Conference.” (ECF No. 3.) The order directed plaintiff to “complete service of process on defendants named in the complaint within 120 days from the date of this order. Plaintiff is cautioned that this action may be dismissed if service of process is not accomplished within 120 days from the date that the complaint is filed. See Fed. R. Civ. P. 4(m).” (Id. at 1.)

That same order set a status (pre-trial scheduling) conference for June 12, 2014, at 10:00 a.m., and stated that “[a]ll parties shall appear by counsel or in person if acting without counsel.” (ECF No. 3 at 2.) The order also directed the parties to file a status report addressing specific topics no later than seven (7) days prior to the status conference. (Id. at 2-3.) The order specifically cautioned that “[f]ailing to obey federal or local rules, or [an] order of this court, may

1 result in dismissal of this action. This court will construe pro se pleadings liberally, but pro se
2 litigants must comply with the procedural rules.” (Id. at 3.)

3 No status report was filed prior to the June 12, 2014 status conference, and plaintiff failed
4 to appear at the status conference. Additionally, the court’s records indicate that no defendant has
5 yet appeared in this case, and there has been no docket activity by any party since the initial filing
6 of the complaint. This strongly suggests that plaintiff has not yet served defendants with process,
7 even though the 120-day period for service of process has expired. After the status conference,
8 the court considered whether the action should be dismissed given plaintiff’s numerous failures.
9 Nevertheless, in light of plaintiff’s *pro se* status and the court’s general preference to resolve
10 actions on their merits, the court first attempted lesser sanctions.

11 On June 13, 2014, the court issued an order requiring plaintiff, within fourteen (14) days
12 of the order, to pay the Clerk of Court \$250.00 in monetary sanctions based on plaintiff’s failure
13 to appear at the status conference and failure to comply with court orders. (ECF No. 5.) The
14 court also directed plaintiff, within fourteen (14) days of the order, to show cause in writing why
15 the case should not be dismissed pursuant to Federal Rule of Civil Procedure 41(b) based on
16 plaintiff’s failure to prosecute the case and failure to comply with court orders. (Id.) Plaintiff
17 was expressly cautioned that failure to pay the monetary sanctions imposed and file a response to
18 the order to show cause by the required deadline would result in a recommendation that the action
19 be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(b). (Id.)¹

20 Although the deadline for paying the monetary sanctions and responding to the order to
21 show cause has now passed, plaintiff failed to do either. As such, the court now recommends
22 dismissal of the action pursuant to Federal Rule of Civil Procedure 41(b) for failure to prosecute
23 the action and failure to comply with court orders.

24
25 ¹ The court notes that its orders have not thus far been returned as undeliverable. Nevertheless,
26 even if they had been, it is plaintiff’s duty to keep the court informed of his current address, and
27 service of the court’s orders at the address on record was effective absent the filing of a notice of
28 change of address. In relevant part, Local Rule 182(f) provides: “Each appearing attorney and
pro se party is under a continuing duty to notify the Clerk and all other parties of any change of
address or telephone number of the attorney or the pro se party. Absent such notice, service of
documents at the prior address of the attorney or pro se party shall be fully effective.”

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

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

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

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

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

////

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

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

11 Here, the public’s interest in expeditious resolution of litigation and the court’s need to
12 manage its docket clearly militate in favor of dismissal of this case, in which plaintiff has failed to
13 respond to and comply with the court’s orders. Also, even though it is unlikely that defendants
14 have suffered any significant prejudice to date, they continue to be named as defendants in a civil
15 action that plaintiff has effectively abandoned. Thus, at a minimum, defendants, who may be
16 unaware of this action, have been unable to defend their interests and move the action towards a
17 resolution. Furthermore, the court has already attempted less drastic alternatives to a
18 recommendation of dismissal. In particular, the court first imposed monetary sanctions and
19 issued an order to show cause, giving plaintiff an opportunity to explain why his case should not
20 be dismissed. However, as noted above, plaintiff entirely failed to respond to the court’s orders.
21 Given plaintiff’s demonstrated unwillingness to comply with court orders, the imposition of
22 additional monetary sanctions would likely be futile, and based on the present record, the court is
23 unable to frame any other type of evidentiary or issue sanctions. Finally, although the court is
24 cognizant of the public policy favoring disposition of cases on their merits, the court finds that
25 this factor is outweighed by the other Ferdik factors. Indeed, it is plaintiff’s own failure to
26 prosecute the case and comply with court orders that preclude a resolution on the merits.

27 Accordingly, IT IS HEREBY RECOMMENDED that:

- 28 1. The action be dismissed pursuant to Federal Rule of Civil Procedure 41(b) based on
plaintiff’s failure to prosecute the action and failure to comply with court orders.
2. The Clerk of Court be directed to vacate all dates and close this case.

