

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

RAJ SINGH,
Plaintiff,
v.
COUNTY OF SACRAMENTO, et al.,
Defendants.

No. 2:14-cv-2382-JAM-KJN PS

FINDINGS AND RECOMMENDATIONS

Through these findings and recommendations, the undersigned recommends that plaintiff's case be dismissed with prejudice. Plaintiff repeatedly failed to comply with the court's orders granting plaintiff leave to amend his defective pleadings by filing multiple amended complaints containing virtually the same allegations as those found to be defective in his prior pleadings. Plaintiff engaged in this practice despite having been repeatedly provided both with notice of the multitude of deficiencies in his allegations and multiple warnings that his continued filing of amended pleadings virtually the same as his prior flawed pleadings would result in a recommendation that this action be dismissed with prejudice. Accordingly, for the reasons described below, the undersigned recommends that plaintiff's case be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(b).

///
///

1 I. BACKGROUND

2 Plaintiff, who is proceeding without counsel, filed the original complaint and an
3 application to proceed *in forma pauperis* on October 9, 2014.¹ (ECF Nos. 1, 2.) On April 10,
4 2015, the court granted plaintiff's application to proceed *in forma pauperis*, but also dismissed his
5 complaint without prejudice based on a number of deficiencies the court outlined in its order.
6 (ECF No. 3.) The undersigned gave plaintiff leave to file an amended pleading (Id.), and plaintiff
7 subsequently filed a First Amended Complaint in response to the court's order. (ECF No. 4.)
8 The court subsequently determined that the First Amended Complaint also contained many of the
9 same deficiencies the court highlighted with respect to the original complaint. (ECF No. 7.)
10 Nevertheless, in light of the fact that plaintiff attempted to remedy at least some of the original
11 complaint's inadequacies, the court again granted plaintiff leave to amend his complaint a second
12 time. (Id.)

13 On November 6, 2015, plaintiff filed a Second Amended Complaint. (ECF No. 9.)
14 However, this complaint was also dismissed because, aside from a few largely superficial
15 changes, it contained verbatim the same allegations as those found deficient in the First Amended
16 Complaint. (ECF No. 10.) Nevertheless, despite plaintiff's apparent lack of a good faith attempt
17 to rectify the deficiencies the court had repeatedly highlighted for him, the court granted plaintiff
18 one final opportunity to file an amended complaint that addressed the multitude of deficiencies in
19 his allegations. (Id.) Furthermore, the court provided plaintiff with the following admonition:

20 *Plaintiff is cautioned that filing another complaint with virtually the same*
21 *allegations as the original complaint, First Amended Complaint, and/or the*
22 *Second Amended Complaint will cause the court to issue sanctions including,*
23 *but not limited to, a recommendation that this entire action be dismissed with*
24 *prejudice. Similar sanctions will issue if the Third Amended Complaint does not*
otherwise address the fundamental deficiencies in plaintiff's current allegations
that the court has already repeatedly highlighted through its previous orders.

25 (Id. at 4 (emphasis in original).)

26 ///

27 _____
28 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 On December 23, 2015, plaintiff filed a Third Amended Complaint. (ECF No. 11.)
2 However, a review of that pleading demonstrates that the allegations contained therein are
3 effectively the same as those contained in the previously-dismissed Second Amended Complaint.
4 (Compare ECF No. 9 with ECF No. 11.) Indeed, the Third Amended Complaint is even titled
5 “Second Amended Complaint for Damages.” (ECF No. 11 at 1.) The only difference between
6 these two pleadings that the court is aware of is that the Third Amended Complaint is also signed
7 by Karen Singh, a purported second plaintiff to this action. Outside of this inclusion, the
8 allegations of the Third Amended Complaint are word-for-word identical to those contained in
9 the Second Amended Complaint, and contain the exact same deficiencies highlighted by the
10 court’s three previous orders issued in this action. Despite the court’s warning that it would
11 recommend that this case be dismissed with prejudice if plaintiff’s Third Amended Complaint
12 contained virtually the same allegations as those contained in his Second Amended Complaint,
13 plaintiff has filed a third amended pleading that clearly appears to flagrantly disregard that order.

14 II. LEGAL STANDARDS

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

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

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

27 ///

28 ///

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, 46 F.3d at 53
22 (“Failure to follow a district court’s local rules is a proper ground for dismissal”); Ferdik, 963
23 F.2d at 1260 (“Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss
24 an action for failure to comply with any order of the court”); Thompson v. Housing Auth. of City
25 of L.A., 782 F.2d 829, 831 (9th Cir. 1986) (per curiam) (stating that district courts have inherent
26 power to control their dockets and may impose sanctions including dismissal or default).

27 III. DISCUSSION

28 Although involuntary dismissal can be a harsh remedy, on balance the five relevant Ferdik
factors weigh in favor of dismissal of this action. See Ferdik, 963 F.2d at 1260. The first two
Ferdik factors strongly support dismissal here. Plaintiff’s multiple failures to file an amended
pleading that addresses the deficiencies in his allegations repeatedly highlighted by the court and

1 apparent disregard for the court's orders directing him not to file pleadings that are virtually
2 indistinguishable from those that have been previously dismissed, despite a clear warning of the
3 consequences for doing so (ECF Nos. 10 at 4), strongly suggest that plaintiff is not interested in
4 seriously prosecuting this case in good faith, or at least, does not take his obligations to the court
5 and other parties seriously. See, e.g., Yourish v. Cal. Amplifier, 191 F.3d 983, 990 (9th Cir.
6 1999) ("The public's interest in expeditious resolution of litigation always favors dismissal").
7 Any further time spent by the court on this case, for which plaintiff has demonstrated a lack of
8 any serious intention to pursue in good faith, will consume scarce judicial resources and take
9 away from other active cases. See Ferdik, 963 F.2d at 1261 (recognizing that district courts have
10 inherent power to manage their dockets without being subject to noncompliant litigants).

11 Furthermore, this is not plaintiff's first failure to comply with a court order. This is the
12 fourth occasion on which plaintiff has filed a defective pleading in this action, and the third time
13 he has done so with allegations that are virtually unchanged after being advised that they contain
14 multiple fundamental deficiencies. Despite receiving warnings to not file pleadings materially
15 indistinguishable from prior defective complaints and having had multiple chances to amend his
16 complaint to provide allegations that give rise to a cognizable cause of action, plaintiff's failures
17 to comply with the court's orders demonstrate plaintiff's lack of any serious intention to pursue
18 this case in a good faith manner. See Ferdik, 963 F.2d at 1261.

19 The third Ferdik factor, prejudice to a defendant, also favors dismissal. Due to the defects
20 that continue to remain within plaintiff's operative pleading, service of process upon the
21 defendants named in this action has not been ordered. Nevertheless, the defendants remain
22 named in a lawsuit. It is difficult to quantify the prejudice suffered by the defendants here;
23 however, it is enough that the defendants have been named in litigation that plaintiff has
24 effectively been unwilling to pursue in good faith, which is demonstrated through his clear
25 unwillingness to make all but the most minimal attempts to correct the deficiencies in his
26 allegations and blatant disregard of court orders. At a minimum, plaintiff's unreasonable delay in
27 prosecuting this action via his filing of multiple nearly identical pleadings has prevented the
28 defendants from attempting to resolve this case on the merits. Unreasonable delay is presumed to

1 be prejudicial. See, e.g., In re Phenylpropanolamine (PPA) Prods. Liab. Litig., 460 F.3d at 1227.

2 The fifth Ferdik factor, which considers the availability of less drastic measures, also
3 supports dismissal of this action. As noted above, the court has actually pursued remedies that
4 are less drastic than a recommendation of dismissal. See Malone v. U.S. Postal Serv., 833 F.2d
5 128, 132 (9th Cir. 1987) (“[E]xplicit discussion of alternatives is unnecessary if the district court
6 actually tries alternatives before employing the ultimate sanction of dismissal”). For instance, the
7 court gave plaintiff multiple opportunities to amend his defective pleading, each time highlighting
8 the deficiencies in his allegations. (ECF Nos. 4, 7, 10.) The court also repeatedly advised
9 plaintiff that he was required to make more substantive amendments to his complaint and follow
10 the court’s orders to not file amended pleadings that are virtually the same as those previously
11 filed and dismissed. (Id.) It also warned plaintiff in plain terms that failure to comply with court
12 orders and failure to file an amended pleading that did not contain defective allegations that were
13 word-for-word the same as those previously dismissed would result in a recommendation of
14 dismissal. (ECF No. 10 at 4.) Warning a plaintiff that failure to take appropriate steps towards
15 resolution of his or her action will cause the action to be dismissed satisfies the requirement that
16 the court consider alternative measures. See, e.g., Ferdik, 963 F.2d at 1262 (“[O]ur decisions also
17 suggest that a district court’s warning to a party that his failure to obey the court’s order will
18 result in dismissal can satisfy the ‘consideration of alternatives’ requirement”) (citing Malone,
19 833 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, 7, 10), 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 Most recently, plaintiff disregarded the court’s order and filed an amended pleading that verbatim
25 mirrored the defective allegations contained in his Second Amended Complaint even though the
26 court explicitly warned him that taking such a course of action would result in a recommendation
27 that this case be dismissed. (ECF No. 10 at 4.)

28 ///

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

11 In sum, the court endeavors to give pro se litigants who are unfamiliar with court
12 procedures a fair opportunity to present their cases. As such, the court has given plaintiff several
13 opportunities to amend his defective pleading. Yet plaintiff did not seize upon these
14 opportunities, and decided instead to flagrantly disregard the court’s orders by filing amended
15 complaints that effectively mimicked those that the court previously dismissed due to multiple
16 deficiencies. The court has also provided plaintiff with cautionary instructions and afforded
17 plaintiff some leniency with respect to the litigation. However, at some point, leniency must give
18 way to considerations of limited court resources and fairness to the other litigants.

19 IV. CONCLUSION

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

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

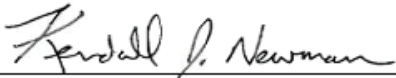
23 2. The Clerk of Court be directed to close this case and vacate all dates.

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

1 shall be served on all parties and filed with the court within fourteen (14) days after service of the
2 objections. The parties are advised that failure to file objections within the specified time may
3 waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th
4 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

5 IT IS SO RECOMMENDED.

6 Dated: February 17, 2016

7 
8

KENDALL J. NEWMAN
9 UNITED STATES MAGISTRATE JUDGE

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28