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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KASEY F. HOFFMAN,
Plaintiff,
v.
KEVIN JONES, et al.,
Defendants.

No. 2:15-cv-1525 TLN AC P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a former county and current state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Currently before the court is the defendants’ motion for terminating and monetary sanctions. ECF No. 40.

I. Procedural History

This action proceeds on plaintiff’s first amended complaint against defendants Jones, Growdon, and the Lassen County Adult Detention Facility for violation of plaintiff’s Eighth Amendment rights. ECF No. 13 at 2-3.

On March 15, 2018, defendants filed a motion to compel, alleging that plaintiff had failed to properly respond to interrogatories and requests for production. ECF No. 21-1 at 2-3. The motion was granted in pertinent part, and plaintiff was ordered to respond to all of defendants’ interrogatories and Requests for Production Nos. 1-3. ECF No. 37 at 17. Defendants then moved for monetary and terminating sanctions on the grounds that plaintiff had failed to provide

1 supplemental responses. ECF 40-1. In response to the motion, plaintiff filed supplemental
2 responses to defendants' interrogatories, ECF No. 41, and a declaration stating that he had filed a
3 timely request for a two-week extension of time, ECF No. 42.¹

4 II. Motion for Terminating Sanctions

5 By order filed June 12, 2019, the court ordered plaintiff to provide supplemental responses
6 to all of defendants' interrogatories and Requests for Production Nos. 1-3 within thirty days of
7 service of the order. ECF No. 37 at 17. Accordingly, plaintiff was required to serve his
8 responses by July 15, 2019.² Counsel for defendants attests that as of July 26, 2019, she had not
9 received any response from plaintiff, ECF No. 40-2 at 2, ¶ 2, and argues that the court should
10 issue terminating sanctions due to the fact that plaintiff "knowingly and intentionally ignored a
11 direct order" and has demonstrated bad faith throughout the course of the litigation through his
12 "egregious, dilatory, and manipulative conduct," ECF No. 40-1 at 5. In response, plaintiff filed
13 his supplemental responses to the interrogatories, dated July 26, 2019, ECF No. 41, and a notice
14 stating that on June 23, 2019, he mailed a request for a two-week extension of time to comply
15 with the order, ECF No. 42.

16 Assuming that plaintiff mailed his request for extension on June 23, 2019, and that it
17 would have been granted had it been received by the court, his deadline to provide supplemental
18 discovery response would have been July 29, 2019. Plaintiff's supplemental interrogatory
19 responses are dated July 26, 2019, ECF No. 41 at 4, and the court will therefore consider the issue
20 of sanctions as though the responses had been timely filed. Accordingly, before deciding whether
21 terminating sanctions are appropriate, the court will first look at whether plaintiff complied with
22 the June 12, 2019 order.

23
24 ¹ Because it was unclear whether plaintiff intended his supplemental responses and declaration as
25 a response to the motion to dismiss, he was given an additional opportunity to file a response and
26 advised that failure to do so would result in the supplemental responses and declaration being
construed as his response to the motion to dismiss. ECF No. 43. Plaintiff did not file any further
response.

27 ² Defendants argue that the responses were due by July 12, 2019. ECF No. 40-1 at 5. However,
28 it appears they neglected to account for the additional three days that were added to the deadline
by Federal Rule of Civil Procedure 6(d) because plaintiff receives service by mail.

1 A. Compliance with a Court Order

2 An initial review of plaintiff’s supplemental responses makes it clear that he has not fully
3 complied with the June 12, 2019 order. Although plaintiff has provided somewhat sparse
4 responses to Interrogatories 1-9 and 12-15, he has neglected to provide any response to
5 Interrogatories 10 and 11, and it does not appear that he provided supplemental responses to
6 Requests for Production Nos. 1-3. ECF No. 41.

7 Interrogatory 10 asked plaintiff to identify all physical altercations he was involved in
8 while at the Lassen County Adult Detention Facility, including the individuals involved, dates,
9 reasons for the altercations, and the response provided. ECF No. 21-2 at 7. Interrogatory 11
10 requested that plaintiff identify all threats made against him while at the Lassen County Adult
11 Detention Facility, including the persons who threatened him and the dates and substance of the
12 threats. Id. Because the complaint alleges that defendant Jones ignored threats on plaintiff’s life
13 and that Growdon and Lassen County Adult Detention Facility had a practice of ignoring threats
14 to inmates safety, these requests are extremely relevant to plaintiff’s claims. The failure to
15 provide such information therefore is highly prejudicial to defendants’ ability to defend
16 themselves.

17 Similarly, Interrogatories 12, 13, and 14 ask plaintiff to “specify which threat(s) [he]
18 brought to the attention of Defendant [Kevin Jones, Dean F. Growdon, or Lassen County ADF],
19 the date said threats were presented, [plaintiff’s] requested relief, and the response offered to
20 [him].” ECF No. 21-1 at 7. Although plaintiff has provided a supplemental response to these
21 interrogatories, his response is as follows:

22 With respect to the threats made twords [sic] my person the
23 defendants have produced a plethora of documents that I brought to
24 the attention of staff. I even sought review from the courts. All these
25 actions and attempts to be free from threats of death and violence
were met with deliberate indifference, no concern for my general
well being, to the point that the defendants told me “I believe your
[sic] fakeing [sic] all this.”

26 ECF No. 41 at 3-4. Plaintiff’s response is wholly insufficient as it fails to identify any specific
27 threats, the dates on which any of these threats occurred, the relief he requested from the staff, or
28 the specific responses offered in response to each threat. Plaintiff cannot simply direct defendants

1 to comb through an unknown number of unspecified documents to attempt to determine what
2 incidents plaintiff is complaining about.

3 Finally, Requests for Production Nos. 1-3 sought all documents identified in
4 Interrogatories 3, 6, and 9. ECF No. 21-2 at 13. While the original responses to those
5 interrogatories did not identify any documents, id. at 19-20, the supplemental responses identify
6 several documents, ECF No. 41 at 3. Plaintiff was explicitly ordered to provide any documents
7 identified in his supplemental responses to the interrogatories. ECF No. 37 at 8. However, not
8 only did plaintiff fail to identify the documents with any specificity, but there is no indication that
9 he has provided defendants with copies of the documents identified.

10 For the reasons identified above, the undersigned finds that plaintiff has not complied with
11 the June 12, 2019 order and will therefore consider whether his failure warrants sanctions.

12 B. Terminating Sanctions Are Appropriate

13 Defendants request terminating sanctions based on plaintiff's failure to comply with the
14 June 12, 2019 order compelling discovery responses. ECF No. 40. The Local Rules of the
15 Eastern District provide wide latitude to the court with regard to sanctions—under Local Rule
16 110, the failure of a party to comply with any local rule or order of the court may result in the
17 imposition of “any and all sanctions authorized by statute or Rule or within the inherent power of
18 the Court.” Moreover, the Federal Rules of Civil Procedure specifically permit dismissal as a
19 sanction for failing to comply with an order compelling discovery. Federal Rule of Civil
20 Procedure 37(b)(2)(A)(v) permits a court to “dismiss[] the action or proceeding in whole or in
21 part” if a party fails to comply with a discovery order. Similarly, under Federal Rule of Civil
22 Procedure 41(b), “[i]f the plaintiff fails to prosecute or to comply with these rules or a court order,
23 a defendant may move to dismiss the action or any claim against it.”

24 It is within the discretion of a district court to order dismissal sanctions. Olivia v.
25 Sullivan, 958 F.2d 272, 273 (9th Cir. 1992) (citing Hamilton Copper & Steel Corp. v. Primary
26 Steel, Inc., 898 F.2d 1428, 1429 (9th Cir. 1990)). However, because “dismissal is a harsh
27 penalty . . . it should only be imposed in *extreme circumstances*.” Hernandez v. City of El
28 Monte, 138 F.3d 393, 399 (9th Cir. 1998) (emphasis in the original) (quoting Ferdik v. Bonzelet,

1 963 F.2d 1258, 1260 (9th Cir. 1992)); Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills,
2 482 F.3d 1091, 1096 (9th Cir. 2007) (“Only ‘willfulness, bad faith, and fault’ justify terminating
3 sanctions” (quoting Jorgensen v. Cassidy, 320 F.3d 906, 912 (9th Cir. 2003))). The court must
4 consider five factors “before resorting to the penalty of dismissal: ‘(1) the public’s interest in
5 expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of
6 prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and
7 (5) the availability of less drastic sanctions.’” Id. (quoting Henderson v. Duncan, 779 F.2d 1421,
8 1423 (9th Cir. 1986)). The fifth factor is comprised of three subparts, which include “whether the
9 court has considered lesser sanctions, whether it tried them, and whether it warned the recalcitrant
10 party about the possibility of case-dispositive sanctions.” Conn. Gen. Life Ins., 482 F.3d at 1096
11 (citation omitted).

12 Not all factors must weigh in favor of dismissal for the sanction to be imposed. Malone v.
13 U.S. Postal Serv., 833 F.2d 128, 133 n.2 (9th Cir. 1987); see also Ferdik, 963 F.2d at 1263 (“Even
14 if the prejudice factor as well as the fifth factor regarding the public policy favoring disposition
15 on the merits both weighed against dismissal, they would not outweigh the other three factors that
16 strongly support dismissal here.” (citation omitted)).

17 i. Public Interest in the Expeditious Resolution of Cases

18 “[T]he public’s interest in expeditious resolution of litigation always favors dismissal.”
19 Yourish v. Cal. Amplifier, 191 F.3d 983, 990 (9th Cir. 1999). In this case, plaintiff has shown
20 little interest in meaningfully fulfilling his discovery obligations or complying with this court’s
21 discovery order, and he has not provided the court or defendants’ counsel with any explanation
22 for his non-compliance. His refusal to comply with discovery obligations, despite a court order to
23 do so, has delayed the expeditious resolution of this case.

24 The court has already had to address defendants’ motion to compel, in which it found
25 plaintiff’s many objections to be without merit and his failure to respond to the requests
26 unjustified. ECF No. 37 at 3-9. Plaintiff has now failed to comply in any meaningful way with
27 the court’s order directing him to provide supplemental responses. Despite being given an
28 additional opportunity to file a proper response to defendants’ motion for sanctions, ECF No. 43,

1 he has failed to do so. The public interest in efficient resolution of cases has thus been thwarted
2 by plaintiff's persistent refusal to meaningfully participate in the discovery process.

3 ii. The Court's Need to Manage Its Docket

4 Plaintiff's failure to properly cooperate in discovery has already consumed a considerable
5 amount of limited judicial time and resources. The Eastern District of California has one of the
6 heaviest caseloads in the country, and as noted above, plaintiff's continued refusal to
7 meaningfully participate in the discovery process already resulted in defendants' motion to
8 compel, which demanded this court's attention, time, and resources. Considerations of judicial
9 economy weigh in favor of terminating sanctions. Ferdik, 963 F.2d at 1261 (finding that it was
10 necessary "to preserve the district courts' power to manage their dockets without being subject to
11 the endless vexatious noncompliance of litigants").

12 iii. Risk of Prejudice to the Defendant

13 "While [the mere pendency of a lawsuit] may be prejudicial, it cannot, by itself, be
14 considered prejudicial enough to warrant dismissal." Ash v. Cvetkov, 739 F.2d 493, 496 (9th Cir.
15 1984)). Rather, "[i]n determining whether a defendant has been prejudiced, we examine whether
16 the plaintiff's actions impair the defendant's ability to go to trial or threaten to interfere with the
17 rightful decision of the case." Malone, 833 F.3d at 131 (citation omitted). The risk of prejudice
18 is considered in relation to plaintiff's reason for defaulting. Pagtalunan v. Galaza, 291 F.3d 639,
19 642 (9th Cir. 2002) (citing Yourish, 191 F.3d at 991).

20 Plaintiff has, after first unjustifiably objecting to defendants' discovery requests, failed to
21 meaningfully or fully comply with the order to provide supplemental responses. As noted above
22 in considering whether plaintiff meaningfully complied with the June 12, 2019 order, the
23 discovery requests at issue are highly probative, and his failure to provide meaningful responses
24 is decidedly prejudicial to defendants and thus this factor also favors dismissal.

25 iv. Public Policy Favoring Merits Resolution

26 The general policy favoring disposition of cases on their merits always weighs against
27 terminating sanctions. Yourish, 191 F.3d at 992 (citation and internal quotation marks omitted).

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1 However, this policy alone is not sufficient to outweigh the other factors discussed herein. Leon
2 v. IDX Sys. Corp., 464 F.3d 951, 960-61 (9th Cir. 2006) (citation omitted).

3 v. Availability and Effectiveness of Lesser Sanctions

4 The court finds no other, lesser sanctions that would be satisfactory or effective. Plaintiff
5 is proceeding in forma pauperis, making it unlikely that monetary sanctions will induce him to
6 cooperate or prosecute his case. Nor does it appear that evidentiary sanctions would be an
7 effective alternative. Exclusion of testimony on the subjects covered by the interrogatories and
8 requests for production noted above would be the same as issuing dispositive sanctions since the
9 threats and defendants' responses to the threats are the entire basis of plaintiff's claims. Finally,
10 plaintiff was specifically warned that failure to comply with the June 12, 2019 order could result
11 in dismissal of this action, ECF No. 37 at 10, and the "court's warning to a party that his failure to
12 obey the court's order will result in dismissal can satisfy the 'consideration of alternatives'
13 requirement," Ferdik, 963 F.2d at 1262 (citing Malone, 833 at 132-33; Henderson v. Duncan, 779
14 F.2d 1421, 1424 (9th Cir. 1986)).

15 Despite being given the opportunity to file a proper response to defendants' motion for
16 sanctions, plaintiff failed to do so. Neither the supplemental discovery responses nor his notice
17 that he sought an extension of time explain why plaintiff has refused to participate fully comply
18 with the court's June 12, 2019 order. Plaintiff's lack of a proper response to the motion and
19 incomplete and insufficient supplemental responses to defendants' discovery requests
20 demonstrate a willful disregard for this court's order and the court finds that lesser sanctions
21 would be ineffective and insufficient to address this behavior.

22 For these reasons, the undersigned finds that terminating sanctions are justified and will
23 recommend dismissal of this case with prejudice.

24 III. Motion for Attorney's Fees and Costs

25 When a party fails to obey a discovery order, "the court must order the disobedient party
26 . . . to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the
27 failure was substantially justified or other circumstances make an award of expenses unjust."
28 Fed. R. Civ. P. 37(b)(2)(C). In light of the fact that defendants' motion for terminating sanctions

1 is being granted, which is a sufficiently severe penalty, the court finds that monetary sanctions
2 would be unjust.

3 Accordingly, IT IS HEREBY RECOMMENDED that:

4 1. Defendants' motion for sanctions, ECF No. 40, be GRANTED IN PART AND
5 DENIED IN PART as follows:

6 a. GRANTED as to terminating sanctions, and

7 b. DENIED as to monetary sanctions.

8 2. This action be dismissed, with prejudice, for failure to comply with a court order. See
9 Fed. R. Civ. P. 37(b)(2)(A); Fed. R. Civ. P. 41(b); L.R. 110.

10 These findings and recommendations are submitted to the United States District Judge
11 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **ten days** after
12 being served with these findings and recommendations, any party may file written objections with
13 the court and serve a copy on all parties. Such a document should be captioned "Objections to
14 Magistrate Judge's Findings and Recommendations." **Due to exigencies in the court's**
15 **calendar, no extensions of time will be granted.** The parties are advised that failure to file
16 objections within the specified time may waive the right to appeal the District Court's order.
17 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

18 DATED: March 16, 2020

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20 ALLISON CLAIRE
21 UNITED STATES MAGISTRATE JUDGE
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