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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RANDY PERKINS,
Plaintiff,
v.
A. ADAMS, et al.,
Defendants.

No. 2:16-cv-01791-JAM-CKD P

ORDER AND
FINDINGS AND RECOMMENDATIONS

Plaintiff is a state inmate proceeding pro se and in forma pauperis in this federal civil rights action filed pursuant to 42 U.S.C. § 1983. On September 26, 2019, the court directed plaintiff to file a pretrial statement on or before December 11, 2019. ECF No. 58. Plaintiff was warned that failure to file a pretrial statement could result in the imposition of sanctions, including dismissal of this action. Id. at 4. The deadline has now passed and plaintiff has yet to file his pretrial statement.

“District courts have the inherent power to control their dockets. In the exercise of that power they may impose sanctions including, where appropriate, default or dismissal.” Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986) (citing Link v. Wabash R.R. Co., 370 U.S. 626 (1961)). A court may dismiss an action based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. Fed. R. Civ. P. 16(f); Fed. R. Civ. P. 41(b); L.R. 110; Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (citing United States

1 v. Warren, 601 F.2d 471, 474 (9th Cir. 1979)) (dismissal for noncompliance with local rule);
2 Malone v. United States Postal Serv., 833 F.2d 128, 130-33 (9th Cir. 1987) (dismissal for failure
3 to comply with court order).

4 In determining whether to dismiss a claim for failure to prosecute or
5 failure to comply with a court order, the court must weigh the
6 following factors: (1) the public's interest in expeditious resolution
7 of litigation; (2) the court's need to manage its docket; (3) the risk of
8 prejudice to defendants/respondents; (4) the availability of less
9 drastic alternatives; and (5) the public policy favoring disposition of
10 cases on their merits.

11 Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963
12 F.2d 1258, 1260-61 (9th Cir. 1992)).

13 The court finds that the public's interest in expeditiously resolving this litigation and the
14 court's interest in managing the docket weigh in favor of dismissal. This action has been pending
15 since July 2016, and there is no evidence that plaintiff has made any attempt to file a pretrial
16 statement. Plaintiff's failure to file a timely pretrial statement despite being warned that his case
17 may be dismissed has already resulted in defendant's request to modify the deadlines in this case,
18 thereby impeding resolution of this case. See ECF No. 61.

19 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal. "To
20 prove prejudice, a defendant must establish that plaintiff's actions impaired defendant's ability to
21 proceed to trial or threatened to interfere with the rightful decision of the case." Pagtalunan, 291
22 F.3d at 642 (citing Malone, 833 F.2d at 131). The risk of prejudice is considered in relation to
23 plaintiff's reason for defaulting. Id. (citing Yourish v. Cal. Amplifier, 191 F.3d 983, 991 (9th Cir.
24 1999)). Plaintiff has provided no explanation for his failure to timely comply with the court's
25 order and his failure impairs the defendants' ability to file a responsive pretrial statement and to
26 prepare for and proceed to trial. See ECF No. 61.

27 The fourth factor—public policy favoring disposition of cases on their merits—is greatly
28 outweighed by the other factors in favor of dismissal discussed herein.

Finally, at this late stage in the proceedings, the court finds that there are no other, lesser
sanctions that would be satisfactory or effective. The court has already warned plaintiff that
failure to file a pretrial statement may result in dismissal of the action. ECF No. 58. The court's

1 warning to a party that failure to obey the court's order will result in dismissal can satisfy the
2 "consideration of the alternatives" requirement. Ferdik, 963 F.2d at 1262 (citing Malone, 833 at
3 132-133; Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986)). In light of the other
4 matters which cannot be properly addressed until plaintiff has filed a pretrial statement, further
5 extensions of time are not feasible. Furthermore, given plaintiff's in forma pauperis status and
6 numerous assertions of continued financial hardship, he would likely be unable to pay any
7 monetary sanctions, making them of little use. Therefore, the undersigned is recommending that
8 this action be dismissed without prejudice as a result of plaintiff's failure to file a pretrial
9 statement.

10 Accordingly, IT IS HEREBY ORDERED that defendant's motion to modify the
11 September 26, 2019 Scheduling Order (ECF No. 61) is denied as moot.

12 IT IS FURTHER RECOMMENDED that this action be dismissed without prejudice. See
13 Fed. R. Civ. P. 41(b).

14 These findings and recommendations are submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
16 after being served with these findings and recommendations, any party may file written
17 objections with the court and serve a copy on all parties. Such a document should be captioned
18 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
19 objections shall be served and filed within fourteen days after service of the objections. The
20 parties are advised that failure to file objections within the specified time may waive the right to
21 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

22 Dated: December 27, 2019

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24 _____
25 CAROLYN K. DELANEY
26 UNITED STATES MAGISTRATE JUDGE

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