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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT WILLIAM TUNSTALL, Jr.,  
Plaintiff,  
v.  
D. BODENHAMER, et al.,  
Defendants.

No. 2:16-cv-2665 JAM DB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff alleges his cell at California State Prison – Sacramento (“CSP-Sac”) was not in compliance with the Americans with Disabilities Act (“ADA”) or with section 504 of the Rehabilitation Act (“RA”). Plaintiff is presently housed at California State Prison – Corcoran (“CSP-Corcoran”). Before the court are plaintiff’s motions for physical access to the law library (ECF No. 61) and for injunctive relief (ECF No. 62). For the reasons set forth below the court will recommend that both motions be denied and that this action be dismissed.

**BACKGROUND**

Plaintiff filed this action in November 2016. Before the court had the opportunity to screen the complaint, plaintiff filed four motions for injunctive relief (ECF Nos. 6, 7, 9, 10) and requested leave to amend the complaint (ECF No. 8). The court instructed plaintiff to file an amended complaint within thirty days and informed him that if he failed to do so the case would

1 proceed on his original complaint. (ECF No. 12.) The court also denied plaintiff's motions for  
2 injunctive relief requesting access to the library, transfer from CSP-Corcoran back to CSP-Sac,  
3 relief from confinement to his cell 24-hours per day, and his motion for the appointment of  
4 counsel. The court noted that plaintiff had been advised in a separate action he could not file  
5 repeated, meritless motions for injunctive relief and warned him he could not continue his stream  
6 of filings in this case without consequences. (Id. at 3.)

7 Plaintiff did not file an amended complaint. The court then screened plaintiff's original  
8 complaint, dismissed his claims, and instructed him to file an amended complaint within thirty  
9 days. (ECF No. 29.) The court additionally addressed ten motions and notices plaintiff had filed  
10 between July 20, 2017 and August 14, 2017 (ECF Nos 19, 21, 22, 23, 24, 26). (ECF No. 30.) In  
11 those filings plaintiff sought: (1) an order requiring CSP-Corcoran to provide him access to the  
12 law library, legal supplies, and a photocopy machine; (2) an order requiring CSP-Corcoran to  
13 allow plaintiff access to programs and services and to release him from the 24-hour per day/7-day  
14 a week confinement in his cell; (3) an order requiring CSP-Corcoran to provide plaintiff all of his  
15 meals; and (4) an order requiring officials at CSP-Corcoran to respond to plaintiff's appeals. (Id.)  
16 The court provided plaintiff the standards for injunctive relief and explained plaintiff's requests  
17 were inappropriate in this action because the relief plaintiff sought was not related to the subject  
18 matter of this suit. However, the court also ordered the Office of the Attorney General to contact  
19 the litigation coordinator at CSP-Corcoran and inform the court about plaintiff's access to the law  
20 library.

21 Supervising Deputy Attorney General Monica Anderson specially appeared by filing a  
22 response to the court's request for information regarding plaintiff's access to the law library.  
23 (ECF No. 36.) The reply stated that plaintiff was designated a Correctional Treatment Center  
24 ("CTC") inmate at CSP-Corcoran due to his medical status. (Id.) CTC inmates are not allowed  
25 physical access to the law library, but may obtain legal materials, supplies, and photocopying  
26 through the law library paging system. (Id.) The reply noted that plaintiff had used the paging  
27 system, but refused to give library workers his legal documents for photocopying. Plaintiff also  
28 stated he refused to give library workers his legal documents for photocopying. (ECF No. 42.)

1           Following the filing of the court's orders dismissing his complaint and denying his  
2 requests for injunctive relief, plaintiff filed eight unsolicited documents and a response to Ms.  
3 Anderson's filing. (ECF Nos. 32, 33, 34, 35, 39, 40, 41, 42, and 43.) The court recommended  
4 plaintiff's requests be denied and again informed plaintiff that injunctive relief against officials at  
5 CSP-Corcoran is not appropriate in this action. The court warned plaintiff for the second time  
6 that he could not continue his stream of filings in this case without consequences and informed  
7 him that further motions for injunctive relief directed towards officials at CSP-Corcoran would  
8 likely result in a recommendation that this action be dismissed. (ECF No. 46.)

9           By order dated October 10, 2017 the court screened plaintiff's first amended complaint  
10 and found he stated a potentially cognizable claim for violation of his rights under the ADA and  
11 the RA, but dismissed his retaliation claim. (ECF No. 45.) The court gave plaintiff the option to  
12 amend or proceed on the complaint as screened. (Id.) Plaintiff has failed to comply with the  
13 order to file an amended complaint or return a completed summons and copies of the complaint  
14 so that defendants may be properly served, but has filed thirteen motions, notices, and objections.  
15 (ECF Nos. 48, 49, 50, 51, 52, 53, 54, 55, 57, 58, 59, 61, 62.)

16           Between October 18, 2017 and November 27, 2017 plaintiff filed a motion for court order  
17 (ECF No. 44), a motion for protective custody (ECF No. 49), two motions for the appointment of  
18 counsel (ECF Nos. 52, 53), two motions for injunctive relief (ECF Nos. 54, 55), and a motion for  
19 an extension of time (ECF No. 51). The motions repeated plaintiff's previous requests for relief  
20 regarding physical access to the library and confinement to his cell, as well as a request for  
21 placement in protective custody.

22           The undersigned recommended all of the motions and notices relating to plaintiff's  
23 confinement at CSP-Corcoran be denied. The court informed plaintiff for the third time that  
24 injunctive relief based on events occurring at CSP-Corcoran were inappropriate in this action  
25 because they are unrelated to his underlying claim and that he could not continue his stream of  
26 filings in this case without consequences. (ECF No. 56.) Plaintiff was warned for the second  
27 time that further motions for injunctive relief directed towards officials at CSP-Corcoran may  
28 result in a recommendation that this action be dismissed. (Id.)



1 service documents and has continued to file motions requesting injunctive relief that is  
2 inappropriate in this action the court will discuss whether dismissal is warranted.

### 3 **I. Legal Standards**

4 “District courts have the inherent power to control their dockets and in the exercise of that  
5 power they may impose sanctions including, where appropriate, dismissal of a case.” Bautista v.  
6 L.A. Cty., 216 F.3d 837, 841 (9th Cir. 2000) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th  
7 Cir. 1992)). Involuntary dismissal is one of the harshest sanctions at a trial court’s disposal, since  
8 it denies the plaintiff his day in court; and as a result, it is reserved for use only in the most  
9 extreme circumstances. Fed. R. Civ. P. 41(b); Thompson v. Housing Auth. of L.A., 782 F.2d  
10 829, 831 (9th Cir. 1986). In determining whether to dismiss a claim for failure to prosecute or  
11 failure to comply with a court order, the court must weigh the following factors: (1) the public’s  
12 interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the  
13 risk of prejudice to defendants; (4) the availability of less drastic alternatives; and (5) the public  
14 policy favoring disposition of cases on their merits. Ferdik, 963 F.2d at 1260-61.

### 15 **II. Discussion**

#### 16 **A. Public’s interest in expeditious resolution of litigation**

17 “The public’s interest in expeditious resolution of litigation always favors dismissal.”  
18 Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999).

19 This action has been pending since November 4, 2016.<sup>1</sup> Plaintiff was directed to file an  
20 amended complaint or return a completed summons with copies of the complaint so that  
21 defendants could be served approximately five months ago. (ECF No. 45.) During the five  
22 month delay plaintiff has filed six motions for injunctive relief (ECF Nos. 49, 54, 55, 57, 61, 62),  
23 two notices (ECF Nos. 48, 58), and two motions for the appointment of counsel (ECF Nos. 52,  
24 53). Plaintiff has acknowledged that he is aware he must either amend or submit service  
25 documents. However, he has not done so, and instead has filed ten motions and notices regarding

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26 <sup>1</sup> Under the prison mailbox rule, a document is deemed served or filed on the date a prisoner signs  
27 the document and gives it to prison officials for mailing. See Houston v. Lack, 487 U.S. 266, 276  
28 (1988) (establishing the prison mailbox rule); Campbell v. Henry, 614 F.3d 1056, 1059 (9th Cir.  
2010) (applying the mailbox rule to both state and federal filings by incarcerated inmates).

1 his request for physical access to the law library, his request for the appointment of counsel, and  
2 complaints regarding his confinement at CSP-Corcoran. Plaintiff's failure to comply with the  
3 court's orders has prevented this action from moving forward. Accordingly, this factor weighs in  
4 favor of dismissal.

### 5 **B. Court's need to manage its docket**

6 "District courts have the inherent power to control their dockets. In the exercise of that  
7 power they may impose sanctions including, where appropriate, default or dismissal." Thompson  
8 v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986) (citing Link v. Wabash R.R. Co., 370 U.S.  
9 626, 630 (1961)).

10 Since filing this action plaintiff has filed 22 motions for injunctive relief (ECF Nos. 6, 7,  
11 9, 10, 11, 16, 19, 21, 22, 23, 24, 26, 31, 32, 33, 39, 40, 41, 42, 44, 49, 54) that have been denied.  
12 (See Findings and Recommendations (ECF Nos. 12, 17, 30, 46, 56) and Orders adopting Findings  
13 and Recommendations in full (ECF Nos. 18, 47, 63, 60, 64).) Plaintiff's failure to comply with  
14 this court's orders and filing repeated motions addressing conditions at his current facility rather  
15 than pursue this claim suggests that he has abandoned this action and that further time spent by  
16 the court on this issue will consume scarce judicial resources<sup>2</sup> in addressing litigation which  
17 plaintiff demonstrates no intention to pursue. Additionally, plaintiff's failure to comply with the  
18 court's order to file an amended complaint or a completed summons with copies of the complaint  
19 has prevented this case from moving forward. Accordingly, this factor weighs in favor of  
20 dismissal.

### 21 **C. Risk of prejudice to defendants**

22 "To prove prejudice, a defendant must establish that plaintiff's actions impaired  
23 defendant's ability to proceed to trial or threatened to interfere with the rightful decision of the  
24 case." Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002) (citing Malone v. U.S. Postal  
25 Service, 833 F.2d 128, 131 (9th Cir. 1987)). The "pendency of a lawsuit is not sufficiently  
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27 <sup>2</sup> "Judges in the Eastern District of California carry the heaviest caseloads in the nation, and this  
28 Court is unable to devote inordinate time and resources to individual cases and matters." Cortez  
v. City of Porterville, 5 F. Supp. 3d 1160, 1162 (E.D. Cal. 2014).

1 prejudicial in and of itself to warrant dismissal.” Id. (citing Yourish, 191 F.3d at 991). However,  
2 the risk of prejudice is also considered in relation to the plaintiff’s reason for defaulting. Id.  
3 (citing Yourish, 191 F.3d at 991).

4 Here, plaintiff stated he has not submitted service documents because he is being denied  
5 access to the law library. However, the court verified that plaintiff has access to legal supplies  
6 and photocopies through the law library paging system. (ECF No. 36.) Additionally, plaintiff has  
7 acknowledged that he refused to hand over his legal documents to be photocopied. (ECF No. 42  
8 at 1.) Thus, the delay caused by plaintiff’s failure to comply with the court’s order is  
9 unreasonable. See Pagtalunan, 291 F.3d at 643 (finding pro se prisoner’s failure to transfer  
10 habeas petition to correct forms and delete “et al.” from the caption was an unreasonable delay).  
11 Accordingly, this factor weighs in favor of dismissal.

#### 12 **D. Availability of less drastic alternatives**

13 Warning a plaintiff that failure to obey a court order will result in dismissal can suffice to  
14 meet the “consideration of alternatives” requirement. Malone, 833 F.2d at 132 (citing Buss v.  
15 Western Airlines, Inc., 738 F.2d 1053, 1054 (9th Cir. 1984)). The court has warned plaintiff  
16 several times that failure to file an amended complaint or comply with court orders may result in  
17 a recommendation that this action be dismissed. (ECF Nos. 29, 45, 56.) The court has also  
18 informed plaintiff that requests for injunctive relief unrelated to his underlying complaint are  
19 inappropriate in this action. In spite of these warnings plaintiff has failed to comply with the  
20 court’s orders and has instead continued his stream of filings requesting relief that is unrelated to  
21 his underlying claim.

22 At this stage of the proceedings there is little available which would constitute a  
23 satisfactory lesser sanction while preserving scarce court resources. Plaintiff is proceeding in  
24 forma pauperis, making monetary sanctions of little use. An order limiting plaintiff’s filings may  
25 reduce the burden on the court’s resources, but would not address plaintiff’s repeated failures to  
26 comply with court orders even after being warned that further noncompliance may result in a  
27 recommendation that this action be dismissed. Accordingly, this factor weighs in favor of  
28 dismissal.

1 **E. Public policy favoring disposition of cases on their merits**

2 Public policy favors disposition of cases on the merits. Thus, this factor weighs against  
3 dismissal. Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998).

4 **III. Conclusion**

5 While public policy weighs against dismissal, all the other factors favor dismissal.  
6 Instead of pursuing his claim in this suit plaintiff has filed a stream of motions and notices  
7 seeking relief on matters unrelated to his claim and has filed the same or similar motions  
8 numerous times. The court cannot continue to expend time and resources on a claim that plaintiff  
9 appears to have abandoned in favor of pursuing a new claim regarding conditions of confinement  
10 at his current facility. As the court has previously informed plaintiff, if he wishes to pursue a  
11 civil rights claim regarding conditions at CSP-Corcoran he should file a separate action  
12 addressing those issues. Accordingly, the court will recommend that this action be dismissed  
13 because plaintiff has refused to comply with this court's order preventing this case from moving  
14 forward and has filed similar motions requesting injunctive relief that is improper in this case.


15 Accordingly, IT IS HEREBY RECOMMENDED that:

- 16 1. Plaintiff's motions for injunctive relief (ECF Nos 61, 62) be denied; and  
17 2. This case be dismissed with prejudice.

18 These findings and recommendations will be submitted to the United States District Judge  
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
20 after being served with these findings and recommendations, plaintiff may file written objections  
21 with the court. The document should be captioned "Objections to Magistrate Judge's Findings  
22 and Recommendations." Plaintiff is advised that failure to file objections within the specified  
23 time may result in waiver of the right to appeal the district court's order. Martinez v. Ylst, 951  
24 F.2d 1153 (9th Cir. 1991).

25 Dated: April 2, 2018

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28 DB:12  
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DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE