

1 On June 8, 2017, plaintiff's complaint was dismissed with leave to amend. Since that
2 order, plaintiff has been granted multiple extensions of time in which to file an amended
3 complaint. On September 26, 2017, the court found that plaintiff has not been diligently
4 prosecuting the instant action, filed November 14, 2016, based on his recent request for medical
5 records to amend the complaint to provide dates, names, and procedures to file his amended
6 complaint. Indeed, Rule 11(c)(3) of the Federal Rules of Civil Procedure provides for the
7 imposition of sanctions where a litigant has violated the following provisions:

8 **(b) Representations to the Court.** By presenting to the court a
9 pleading, written motion, or other paper--whether by signing, filing,
10 submitting, or later advocating it--an attorney or unrepresented
11 party certifies that to the best of the person's knowledge,
information, and belief, formed after an inquiry reasonable under
the circumstances:

12 **(1)** it is not being presented for any improper purpose, such as to
13 harass, cause unnecessary delay, or needlessly increase the cost of
litigation;

14 **(2)** the claims, defenses, and other legal contentions are warranted
15 by existing law or by a nonfrivolous argument for extending,
modifying, or reversing existing law or for establishing new law;

16 **(3)** the factual contentions have evidentiary support or, if
17 specifically so identified, will likely have evidentiary support after
a reasonable opportunity for further investigation or discovery; and

18 **(4)** the denials of factual contentions are warranted on the evidence
19 or, if specifically so identified, are reasonably based on belief or a
lack of information.

20 Fed. R. Civ. P. 11(b). Moreover, the court has authority to dismiss an action for lack of
21 prosecution under Federal Rule of Civil Procedure 41(b). See Chambers v. NASCO, Inc., 501
22 U.S. 32, 44 (1991) (recognizing that a court "may act *sua sponte* to dismiss a suit for failure
23 to prosecute"); Hells Canyon Preservation Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th
24 Cir. 2005) (stating that courts may dismiss an action pursuant to Federal Rule of Civil Procedure
25 41(b) *sua sponte* for a plaintiff's failure to prosecute or comply with the rules of civil procedure
26 or the court's orders); Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) (*per curiam*) ("Failure to
27 follow a district court's local rules is a proper ground for dismissal"); Ferdik v. Bonzelet, 963
28 F.2d 1258, 1260 (9th Cir. 1992) ("Pursuant to Federal Rule of Civil Procedure 41(b), the district

1 court may dismiss an action for failure to comply with any order of the court”); Thompson v.
2 Housing Auth. of City of L.A., 782 F.2d 829, 831 (9th Cir. 1986) (*per curiam*) (stating that
3 district courts have inherent power to control their dockets and may impose sanctions including
4 dismissal or default).

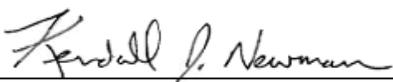
5 On the other hand, since June 8, 2017, plaintiff has been transferred three times, and does
6 not have access to his legal materials while housed at the Sacramento County Jail. Although
7 plaintiff has now been sentenced, he did not indicate what his sentence was, and it is unclear
8 whether plaintiff will be returning to the El Dorado County Jail or if he will be committed to state
9 prison.

10 Therefore, plaintiff’s motion for stay is partially granted. This action is stayed for 90
11 days. Ninety days from the date of this order, plaintiff shall file a motion to lift the stay,
12 accompanied by his proposed amended complaint. If plaintiff fails to comply with this order, the
13 undersigned will recommend that this action be dismissed without prejudice. Plaintiff is
14 cautioned that he must keep this court apprised of his current address at all times. Local Rule
15 183(b). Failure to do so will also result in the dismissal of this action.

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. Plaintiff’s motion for stay (ECF No. 27) is partially granted;
- 18 2. This action is stayed for 90 days;
- 19 3. Ninety days from the date of this order, plaintiff shall file a motion to lift the stay,
20 accompanied by a proposed amended complaint;
- 21 4. The Clerk of the Court is directed to administratively terminate this action; and
- 22 5. Plaintiff is cautioned that failure to comply with this order will result in the dismissal
23 of this action.

24 Dated: November 8, 2017

25 
26 _____
27 KENDALL J. NEWMAN
28 UNITED STATES MAGISTRATE JUDGE

/robb2697.stay