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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PAUL LOUIS BLANK, et al.,
Plaintiff,
v.
SACRAMENTO REGIONAL TRANSIT,
et al.,
Defendant.

No. 2:17-cv-0371-JAM-KJN PS

FINDINGS AND RECOMMENDATIONS

Plaintiff Paul Blank, proceeding without counsel, commenced this action on February 21, 2017.¹ (ECF No. 1.) On April 19, 2017, this court granted plaintiff’s motion to proceed *in forma pauperis*. (ECF No. 4.) In the same order, while noting that “plaintiffs’ 4-page complaint is rambling and largely unintelligible” and that “the court is highly skeptical that Paul Blank can allege facts sufficient to support a viable civil rights claim under § 1983 and/or a claim under the ADA against any of the named defendants, in an abundance of caution” this court granted plaintiff leave to amend. (*Id.*) Paul Blank was ordered to file either (a) a first amended complaint in accordance with the requirements of the order or (b) a notice of voluntary dismissal of the action without prejudice, within 28 days of April 19, 2017. (*Id.*) Paul Blank has failed to comply

¹ The claims of corporate plaintiff, Paul Blank Apparel Inc., were dismissed without leave to amend on May 26, 2017. (ECF No. 5.)

1 with the order.

2 Eastern District Local Rule 110 provides that “[f]ailure of counsel or of a party to comply
3 with these Rules or with any order of the Court may be grounds for imposition by the Court of
4 any and all sanctions authorized by statute or Rule or within the inherent power of the Court.”

5 Moreover, Eastern District Local Rule 183(a) provides, in part:

6 Any individual representing himself or herself without an attorney
7 is bound by the Federal Rules of Civil or Criminal Procedure, these
8 Rules, and all other applicable law. All obligations placed on
9 “counsel” by these Rules apply to individuals appearing in propria
10 persona. Failure to comply therewith may be ground for dismissal,
11 judgment by default, or any other sanction appropriate under these
12 Rules.

13 See also King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) (“Pro se litigants must follow the
14 same rules of procedure that govern other litigants”) (overruled on other grounds). A district
15 court may impose sanctions, including involuntary dismissal of a plaintiff’s case pursuant to
16 Federal Rule of Civil Procedure 41(b), where that plaintiff fails to prosecute his or her case or
17 fails to comply with the court’s orders, the Federal Rules of Civil Procedure, or the court’s local
18 rules. See Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991) (recognizing that a court “may act
19 sua sponte to dismiss a suit for failure to prosecute”); Hells Canyon Preservation Council v. U.S.
20 Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005) (stating that courts may dismiss an action
21 pursuant to Federal Rule of Civil Procedure 41(b) sua sponte for a plaintiff’s failure to prosecute
22 or comply with the rules of civil procedure or the court’s orders); Ghazali v. Moran, 46 F.3d 52,
23 53 (9th Cir. 1995) (per curiam) (“Failure to follow a district court’s local rules is a proper ground
24 for dismissal”); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992) (“Pursuant to Federal
25 Rule of Civil Procedure 41(b), the district court may dismiss an action for failure to comply with
26 any order of the court”); Thompson v. Housing Auth. of City of L.A., 782 F.2d 829, 831 (9th Cir.
27 1986) (per curiam) (stating that district courts have inherent power to control their dockets and
28 may impose sanctions including dismissal or default).

A court must weigh five factors in determining whether to dismiss a case for failure to
prosecute, failure to comply with a court order, or failure to comply with a district court’s local

1 rules. See, e.g., Ferdik, 963 F.2d at 1260. Specifically, the court must consider:

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

6 Id. at 1260-61; accord Pagtalunan v. Galaza, 291 F.3d 639, 642-43 (9th Cir. 2002); Ghazali, 46
7 F.3d at 53. The Ninth Circuit Court of Appeals has stated that “[t]hese factors are not a series of
8 conditions precedent before the judge can do anything, but a way for a district judge to think
9 about what to do.” In re Phenylpropanolamine (PPA) Prods. Liab. Litig., 460 F.3d 1217, 1226
10 (9th Cir. 2006).

11 Although involuntary dismissal can be a harsh remedy, on balance the five relevant
12 factors weigh in favor of dismissal here. The first two Ferdik factors strongly support dismissal,
13 given that plaintiff’s failure to comply with the court’s orders and failure to prosecute his case
14 have unreasonably delayed the progress of this litigation. The third Ferdik factor also favors
15 dismissal. Although the defendants have not yet appeared in the case, they have been named in a
16 civil action, and plaintiff’s failure to prosecute the case has hampered defendants’ ability to move
17 this case forward towards resolution.

18 Additionally, the fifth Ferdik factor, which considers the availability of less drastic
19 measures, also supports dismissal. As noted above, the court has already attempted less drastic
20 sanctions—granting the plaintiff leave to amend—prior to recommending dismissal. However,
21 plaintiff failed to comply with the court’s order.

22 Finally, the court finds that the fourth Ferdik factor, which addresses the public policy
23 favoring disposition of cases on the merits, does not materially counsel against dismissal. If
24 anything, a disposition on the merits has been hindered by plaintiff’s own failure to comply with
25 the court’s order and prosecute his case. In any event, the court finds that the fourth Ferdik factor
26 is outweighed by the other Ferdik factors.

27 Consequently, dismissal is appropriate.

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Accordingly, IT IS HEREBY RECOMMENDED that:

1. The action be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(b).
2. The Clerk of Court be directed to vacate all dates and close this case.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections shall be served on all parties and filed with the court within fourteen (14) days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

IT IS SO RECOMMENDED.

Dated: June 2, 2017


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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