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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KRZYSZTOF F. WOLINSKI,
Plaintiff,
v.
J. LEWIS, et al.,
Defendants.

No. 2:17-cv-0583 MCE AC P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. On January 10, 2018, defendants filed a motion for sanctions asserting that plaintiff had violated Federal Rule of Civil Procedure 11(b) by making factual misrepresentations to the court and by “engaging in personal attacks that [were] designed to harass, cause unnecessary delay, and needlessly increase the cost of litigation.”¹ See ECF No. 29-1 at 2. Plaintiff never responded to the motion, and the time within which to do so has long since passed. See generally Local Rule 230(l). Consequently, this matter is deemed submitted. See id.

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¹ The court notes for the record that prior to filing the instant motion for sanctions, defense counsel states that on or around December 15, 2017, he complied with Rule 11(c)’s safe harbor requirement by contacting plaintiff regarding his misrepresentations in several pleadings plaintiff filed in November 2017 and providing plaintiff with proposed versions of defendants’ sanction motion. See ECF No. 29-2 at 2, 56-59; see also ECF No. 29-3.

1 On September 19, 2018, the court ordered plaintiff to show cause why defendants' motion
2 should not be granted. ECF No. 32. To date, plaintiff has neither complied with the court's order
3 nor responded to it in any other way. For these reasons, as well as those stated herein, the court
4 will grant defendants' motion for sanctions.

5 I. APPLICABLE LAW

6 A. Motion for Sanctions: Federal Rule of Civil Procedure 11

7 Federal Rule of Civil Procedure 11(b) and (c) state, in relevant part:

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

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

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

19

20 **(c) Sanctions.**

21 (1) *In General.* If, after notice and a reasonable opportunity to respond, the
22 court determines that Rule 11(b) has been violated, the court may impose an
23 appropriate sanction on any attorney, law firm, or party that violated the rule or is
24 responsible for a violation committed by its partner, associate or employee.

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26 (4) *Nature of a Sanction.* A sanction imposed under this rule must be
27 limited to what suffices to deter repetition of the conduct or comparable conduct by
28 others similarly situated. The sanction may include nonmonetary directives, an
order to pay a penalty into court, or, if imposed on motion and warranted for
effective deterrence, an order directing payment to the movant of part or all of the
reasonable attorney's fees and other expenses directly resulting from the violation.

Fed. R. Civ. P. 11(b)(1), (3) and (c)(1), (4) (underline added).

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1 B. Motions in Prisoner Actions: Local Rule 230

2 Local Rule 230(1) identifies filing requirements for pro se prisoner litigants. It states in
3 relevant part:

4 All motions . . . filed in actions wherein one party is incarcerated and proceeding
5 in propria persona shall be submitted upon the record without oral argument unless
6 ordered by the Court. . . . Opposition, if any, to the granting of the motion shall be
7 served and filed by the responding party not more than twenty-one (21) days after
8 the date of service of the motion. A responding party who has no opposition to the
9 granting of the motion shall serve and file a statement to that effect, specifically
10 designating the motion in question. Failure of the responding party to file an
11 opposition or to file a statement of no opposition may be deemed a waiver of any
12 opposition to the granting of the motion and may result in the imposition of
13 sanctions. The moving party may, not more than seven (7) days after the opposition
14 has been filed in CM/ECF, serve and file a reply to the opposition. All such motions
15 will be deemed submitted when the time to reply has expired.

16 Local Rule 230(1) (underline added).

17 C. General Rules of Pleading: Federal Rule of Civil Procedure 8

18 Federal Rule of Civil Procedure 8 states in relevant part:

19 (b) **Defenses; Admissions and Denials.**

20 (1) *In General.* In responding to a pleading, a party must:

21 (A) state in short and plain terms its defenses its defenses to each claim
22 asserted against it, and

23 (B) admit or deny the allegations asserted against it by an opposing
24 party.

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26 (6) *Effect of Failing to Deny.* An allegation – other than one relating to the
27 amount of damages – is admitted if a responsive pleading is required and the
28 allegation is not denied.

Fed. R. Civ. P. 8(b)(1)(A)-(B), and (b)(6) (underline added).

D. Sanctions for Noncompliance with Rules: Local Rule 110

Local Rule 110 states in its entirety: “Failure of counsel or of a party to comply with these
Rules or with any order of the Court may be grounds for imposition by the court of any and all
sanctions authorized by statute or Rule or within the inherent power of the Court.” L.R. 110.

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1 II. DISCUSSION

2 A. Motion for Sanctions

3 Defendants' motion for sanctions alleges that plaintiff has violated Federal Rule of Civil
4 Procedure 11(b) by "making factual representations to the Court, and by engaging in personal
5 attacks that are designed to harass, cause unnecessary delay, and needlessly increase the cost of
6 litigation." ECF No. 29-1 at 2. They contend that plaintiff has violated Rule 11(b) by doing the
7 following: (1) falsely claiming that defendant Powell, a prison librarian, was fired from his
8 position for misconduct; (2) altering the Form 22 that had been provided to plaintiff by defendant
9 Powell and defense counsel, and leading the court to rely on plaintiff's misrepresentations; (3)
10 falsely claiming that the Office of the Attorney General interfered with plaintiff's access to the
11 law library, and (4) falsely claiming that defendant Powell and defense counsel engaged in
12 misconduct. See id. at 5-6. For these reasons, defendants contend, the court should find that
13 plaintiff has violated Rule 11(b) and impose sanctions on him. See id. at 6-7.

14 Having taken into consideration plaintiff's in forma pauperis status as well as the due
15 process requirement that sanctions imposed must relate to the misconduct that has occurred (see
16 ECF No. 29-1 at 6-7), defendants request that the following sanctions be imposed on plaintiff:
17 (1) monetary sanctions that are stayed until such time as plaintiff is able to pay them; (2) an
18 admonishment directing plaintiff to refrain from making further misrepresentations to the court,
19 and (3) progressive sanctions should plaintiff's violations continue, up to and including
20 terminating sanctions. See id. at 7.

21 As stated earlier, plaintiff has not responded to defendants' January 2018 motion for
22 sanctions (see ECF No. 29), nor has he complied with the court's subsequent September 2018
23 order to show cause why the motion should not be granted (see ECF No. 32). Plaintiff failed to
24 comply with the court's order to show cause despite the fact that on October 22, 2018, the court
25 granted plaintiff a sixty-day extension of time to do so.² See ECF No. 34 at 3.

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27 ² When the court's order to show cause was issued on September 19, 2018, plaintiff was given
28 twenty-one days to respond. Instead of doing so, on October 12, 2018, plaintiff filed a "thirty to
sixty-day" request for an extension of time to respond to defendants' motion for sanctions (see
ECF No. 33), despite the fact that defendants' sanctions motion had been filed back in January of

1 B. Analysis

2 District courts retain broad discretion to control their dockets and “[i]n the exercise of that
3 power they may impose sanctions, including where appropriate, default or dismissal.” Adams v.
4 California Dep’t of Health Servs., 487 F.3d 684, 688 (9th Cir. 2007) (brackets in original)
5 (quoting Thompson v. Hous. Auth. of City of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986)
6 (per curiam)). “[C]ourts have inherent power to dismiss an action when a party has willfully
7 deceived the court and engaged in conduct utterly inconsistent with the orderly administration of
8 justice.” Fjelstad v. American Honda Motor Co., Inc., 762 F.2d 1334, 1338 (9th Cir. 1985)
9 (quoting Wyle v. R.J. Reynolds Industries, Inc., 709 F.2d 585, 589 (9th Cir. 1963)); see, e.g.,
10 Anheuser-Busch, Inc. v. Natural Beverage Distrib., 69 F.3d 337, 348 (9th Cir. 1995) (upholding
11 dismissal where party engaged in deceptive practices that undermined the integrity of the
12 proceedings). “Dismissal . . . is so harsh a penalty it should be imposed as a sanction only in
13 extreme circumstances.” Thompson, 782 F.2d at 831 (citing Henderson v. Duncan, 779 F.2d
14 1421, 1423 (9th Cir. 1986)). In keeping within these parameters, courts have dismissed an action
15 with prejudice for failure to comply with a court order, for failure to prosecute, and for failure to
16 comply with local rules. See, e.g., Malone v. United States Postal Service, 833 F.2d 128, 130-31
17 (9th Cir. 1987) (dismissal for failure to comply with court order); see also Henderson, 779 F.2d at
18 1424 (dismissal for failure to prosecute and for failure to comply with local rules).

19 1. Violation of Local Rules 110 and 230(1)

20 Even without regard for the substantive allegations in defendants’ motion for sanctions,
21 both plaintiff’s actions and his inaction to date could support a recommendation of dismissal. By
22 failing to show cause why sanctions should not be imposed upon him, plaintiff has failed to
23 comply with a court order. See L.R. 110; see, e.g., Ferdik v. Bonzelet, 963 F.2d 1258, 1261 (9th
24 Cir. 1992) (affirming district court dismissal of pro se prisoner’s civil rights action for failure to
25 obey court order to file conforming complaint). The court also notes that when issuing the order
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27 2018. This led to the court’s denial of plaintiff’s extension of time request to respond to
28 defendants’ motion for sanctions, and its sua sponte grant of an extension of time to plaintiff to
respond to the order to show cause. See ECF No. 34 at 3.

1 to show cause, it warned plaintiff that his failure to file a timely response might result in the
2 dismissal of this action for failure to prosecute and/or failure to follow a court order. See ECF
3 No. 32 at 9.

4 In addition, plaintiff's failure to respond to defendants' motion for sanctions violates
5 Local Rule 230(1) and also subjects him to sanctions under that rules as well as under Local Rule
6 110. Moreover, plaintiff's failure to respond to the motion for sanctions constitutes an admission
7 of defendants' allegations. See Fed. R. Civ. P. 8; see generally L.R. 230(1) (stating failure to
8 respond to motion may be deemed waiver of opposition to grant of motion). Accordingly, the
9 court construes plaintiff's violations of Local Rules 110 and 230(1) as an admission that he made
10 the alleged misrepresentations to the court and delayed proceedings.

11 2. Violation of Federal Rules of Civil Procedure 11(b)(1) and (b)(3)

12 The court finds that plaintiff's consistent failure to adhere to court rules, his intentional
13 filing of altered paperwork with the court, and his filing of false allegations regarding defendant
14 Powell and the Office of the Attorney General, were designed to harass and to cause unnecessary
15 delay, and that these actions have needlessly increased the costs of litigation in this matter.
16 Plaintiff's claims regarding defendant Powell and the Office of the Attorney General, as well as
17 the Form 22 that plaintiff submitted in an attempt to document his lack of prison law library
18 access (see ECF No. 23 at 38), are unsubstantiated and lack evidentiary support. Making
19 representations to the court that harass, cause unnecessary delay, or that needlessly increase the
20 cost of litigation, or that lack evidentiary support, are also grounds for the imposition of
21 sanctions. See Fed. R. Civ. P. 11(b)(1), (3) and (c)(1), (4). Because plaintiff's actions have
22 violated Federal Rules of Civil Procedure 11(b)(1) and (b)(3), the imposition of sanctions against
23 plaintiff is also appropriate pursuant to Federal Rule of Civil Procedure 11(c)(1), (4) and Local
24 Rule 110.

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1 3. Sanctions Are Appropriate

2 As defendants point out, the actions that give rise to their motion for sanctions are not
3 related to the substantive claims in plaintiff’s civil rights action.³ See ECF No. 29-1 at 7. More
4 importantly, prior to implementing terminating sanctions, less severe sanctions must first be
5 considered. See generally Thompson, 782 F.2d at 831 (requiring weighing of several factors,
6 including less drastic sanctions, prior to imposing remedy of dismissal). Accordingly, the court
7 will not recommend the ultimate sanction of dismissal at this point. Instead, the initial sanctions
8 to be imposed shall serve as a second formal warning to plaintiff. This second warning will be
9 taken into consideration if, at a later date, the court must determine whether additional and more
10 severe sanctions are necessary. See generally Anheuser-Busch, Inc., 69 F.3d at 352 (finding
11 rejection of lesser sanctions appropriate where court anticipates continued deceptive misconduct).

12 4. Sanctions to Be Imposed

13 The court will impose the following sanctions: (1) an admonishment regarding plaintiff’s
14 deceptive and harassing actions to date; (2) an order that plaintiff shall cease said actions for the
15 remainder of these proceedings; (3) a warning that similar actions taken by plaintiff in the future
16 may result in an outright dismissal of this action; (4) a warning that plaintiff is required to follow
17 all rules and laws throughout these proceedings; and (5) the imposition of a suitable monetary
18 assessment on plaintiff that takes into consideration the time defense counsel spent preparing the
19 motion for sanctions.

20 Payment of the monetary sanction shall be stayed until such time as plaintiff is able to pay
21 it. The court shall make the determination of the amount to be paid and when plaintiff shall begin
22 to pay it under separate order. Prior to the court determining the amount of the monetary
23 sanction, counsel for defendants will be ordered to provide, via sworn declaration, a detailed
24 accounting statement of the time expended and the costs the Office of the Attorney General
25 incurred to prepare the motion for sanctions (ECF No. 29, et seq.). Counsel shall also present to

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27 ³ In plaintiff’s amended complaint, he alleges that he experienced cruel and unusual punishment
28 at the hands of prison authorities due to a beating and unsafe prison conditions and that he was
denied a 602 appeal. See generally ECF 24 at 9. Plaintiff also alleges that prison authorities
demonstrated deliberate indifference to his serious medical needs. See id.

1 the court the factors it proposes for determination that plaintiff is able to pay the assessed sanction
2 amount.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. Defendants' January 10, 2018 motion for sanctions (ECF No. 29) is GRANTED;

5 2. Within thirty days of the date of this order, counsel for defendants shall provide, via
6 sworn declaration, a detailed accounting statement of the time expended and the costs the Office
7 of the Attorney General incurred to prepare the motion for sanctions (ECF No. 29, et seq.).

8 Thereafter the court shall impose suitable monetary sanctions upon plaintiff that take defense
9 counsel's statements into consideration;

10 3. The court formally admonishes plaintiff that the conduct identified by defendants has
11 been found deceptive and harassing;

12 4. Plaintiff shall cease these actions throughout the remainder of these proceedings; and

13 5. Plaintiff is warned that:

14 (a) Similar actions taken by plaintiff in the future may result in a recommendation that
15 his lawsuit be dismissed; and

16 (b) Plaintiff is required to follow all state and federal rules and laws throughout these
17 proceedings.

18 DATED: January 14, 2019

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20 ALLISON CLAIRE
21 UNITED STATES MAGISTRATE JUDGE
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