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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

PATRICK BLACKSHIRE  
  
Plaintiff,  
  
v.  
  
CITY OF SACRAMENTO, et al.,  
  
Defendants.

No. 2:17-cv-1531-MCE-KJN PS

ORDER AND  
FINDINGS AND RECOMMENDATIONS

On September 26, 2017, the court denied plaintiff’s motion to proceed *in forma pauperis*, and provided plaintiff with 28 days to either pay the filing fee or file a properly-completed motion to proceed *in forma pauperis*. (ECF No. 4.) Plaintiff was cautioned that failure to timely comply with the order may result in dismissal of the action pursuant to Federal Rule of Civil Procedure 41(b). (Id.)

Plaintiff ultimately failed to pay the filing fee, nor did he file a properly-completed motion to proceed *in forma pauperis* by the applicable deadline. As such, the court considered whether the action should be dismissed. Nevertheless, in light of plaintiff’s *pro se* status, and the court’s desire to resolve the action on the merits, the court first attempted lesser, monetary sanctions. Accordingly, on October 31, 2017, the court ordered plaintiff, within 21 days, to:

1 (1) pay \$100.00 in monetary sanctions based on his failure to comply with the court’s orders and  
2 failure to prosecute the case, and (2) either pay the filing fee or file a properly-completed motion  
3 to proceed *in forma pauperis*. (ECF No. 5.) In the alternative, if plaintiff concluded that he no  
4 longer wishes to pursue the action, he was permitted to file a notice of voluntary dismissal of the  
5 action without prejudice within 21 days, in lieu of paying the sanctions. (*Id.*) Plaintiff was  
6 expressly cautioned that failure to timely comply with the court’s order would result in dismissal  
7 of the action with prejudice pursuant to Federal Rule of Civil Procedure 41(b). (*Id.*)

8 Although the applicable deadline has now passed, and despite the court’s clear  
9 admonitions, plaintiff again entirely failed to respond to the court’s order. Therefore, at this  
10 juncture, the court has little choice but to recommend dismissal of the action pursuant to Federal  
11 Rule of Civil Procedure 41(b) for failure to comply with court orders and failure to prosecute the  
12 action.

13 Eastern District Local Rule 110 provides that “[f]ailure of counsel or of a party to comply  
14 with these Rules or with any order of the Court may be grounds for imposition by the Court of  
15 any and all sanctions authorized by statute or Rule or within the inherent power of the Court.”  
16 Moreover, Eastern District Local Rule 183(a) provides, in part:

17 Any individual representing himself or herself without an attorney  
18 is bound by the Federal Rules of Civil or Criminal Procedure, these  
19 Rules, and all other applicable law. All obligations placed on  
20 “counsel” by these Rules apply to individuals appearing in propria  
21 persona. Failure to comply therewith may be ground for dismissal,  
22 judgment by default, or any other sanction appropriate under these  
23 Rules.

21 See also King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) (“Pro se litigants must follow the  
22 same rules of procedure that govern other litigants”) (overruled on other grounds). A district  
23 court may impose sanctions, including involuntary dismissal of a plaintiff’s case pursuant to  
24 Federal Rule of Civil Procedure 41(b), where that plaintiff fails to prosecute his or her case or  
25 fails to comply with the court’s orders, the Federal Rules of Civil Procedure, or the court’s local  
26 rules. See Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991) (recognizing that a court “may act  
27 sua sponte to dismiss a suit for failure to prosecute”); Hells Canyon Preservation Council v. U.S.  
28 Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005) (stating that courts may dismiss an action

1 pursuant to Federal Rule of Civil Procedure 41(b) sua sponte for a plaintiff's failure to prosecute  
2 or comply with the rules of civil procedure or the court's orders); Ghazali v. Moran, 46 F.3d 52,  
3 53 (9th Cir. 1995) (per curiam) ("Failure to follow a district court's local rules is a proper ground  
4 for dismissal"); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992) ("Pursuant to Federal  
5 Rule of Civil Procedure 41(b), the district court may dismiss an action for failure to comply with  
6 any order of the court"); Thompson v. Housing Auth. of City of L.A., 782 F.2d 829, 831 (9th Cir.  
7 1986) (per curiam) (stating that district courts have inherent power to control their dockets and  
8 may impose sanctions including dismissal or default).

9 A court must weigh five factors in determining whether to dismiss a case for failure to  
10 prosecute, failure to comply with a court order, or failure to comply with a district court's local  
11 rules. See, e.g., Ferdik, 963 F.2d at 1260. Specifically, the court must consider:

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

15 Id. at 1260-61; accord Pagtalunan v. Galaza, 291 F.3d 639, 642-43 (9th Cir. 2002).

16 Here, the first two factors weigh in favor of dismissal, because this case has already been  
17 delayed by plaintiff's failure to take the steps necessary to move this case forward. The third  
18 factor also slightly favors dismissal, because, at a minimum, defendants have been deprived of an  
19 opportunity to be promptly notified of the lawsuit and prepare their defense. With the passage of  
20 time, witnesses' memories fade and evidence becomes stale.

21 Furthermore, the fifth factor, availability of less drastic alternatives, favors dismissal,  
22 because the court has already attempted less drastic alternatives. More specifically, the court,  
23 cognizant of plaintiff's *pro se* status, declined to initially dismiss the case, but instead imposed  
24 minimal monetary sanctions. The court also clearly cautioned plaintiff regarding the potential  
25 consequences of any continued failure to comply with the court's orders. Additionally, given  
26 plaintiff's initial request to proceed *in forma pauperis* and his complete failure to respond to the  
27 court's orders, the court is not convinced that plaintiff could or would pay any increased  
28 monetary sanctions if they were ordered.

1 Finally, as to the fourth factor, the public policy favoring disposition of cases on their  
2 merits, that factor is outweighed by the other Ferdik factors. Indeed, it is plaintiff's own failure to  
3 prosecute the case and comply with court orders that precludes a resolution on the merits.

4 Therefore, after carefully evaluating the Ferdik factors, the court concludes that dismissal  
5 is appropriate.

6 Accordingly, IT IS HEREBY RECOMMENDED that:

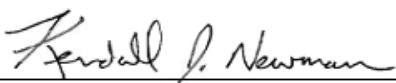
- 7 1. The action be dismissed pursuant to Federal Rule of Civil Procedure 41(b).
- 8 2. The Clerk of Court be directed to close this case.

9 In light of those recommendations, IT IS ALSO HEREBY ORDERED that all pleading,  
10 discovery, and motion practice in this action are stayed pending resolution of the findings and  
11 recommendations. With the exception of objections to the findings and recommendations and  
12 any non-frivolous motions for emergency relief, the court will not entertain or respond to any  
13 motions and other filings until the findings and recommendations are resolved.

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 (14)  
16 days 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 reply to the objections  
19 shall be served on all parties and filed with the court within fourteen (14) days after service of the  
20 objections. The parties are advised that failure to file objections within the specified time may  
21 waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th  
22 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

23 IT IS SO ORDERED AND RECOMMENDED.

24 Dated: December 12, 2017

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27 KENDALL J. NEWMAN  
28 UNITED STATES MAGISTRATE JUDGE