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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

AHMAD J. ALJINDI,
Plaintiff,
v.
NORTHCENTRAL UNIVERSITY,
Defendant.

No. 2:17-cv-01990-JAM-KJN PS

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff Ahmad J. Aljindi, proceeding without counsel, commenced this action on September 26, 2017, and was granted leave to proceed *in forma pauperis*. (ECF Nos. 1, 4.) Plaintiff has filed several motions in this matter: to disqualify the magistrate judge; to utilize the court’s electronic filing system; to appoint counsel; to transfer venue; and for default judgment. (See ECF Nos. 3, 7, 13, 14, 16, 23, 38, 46.) The court has denied each of these motions, as each has been without merit or sufficient legal justification. (See ECF Nos. 4, 11, 20, 26, 57.)

On November 9, 2017, plaintiff filed his first amended complaint, which defendant then moved to dismiss. (ECF Nos. 18, 41.) The court granted defendant’s motion to dismiss on February 23, 2018. (ECF No. 57 at 12.) At the same time, plaintiff was granted leave to amend. (Id.) Specifically, the court ordered plaintiff to “file either (a) a second amended complaint . . . or (b) a notice of voluntary dismissal of the action” within 28 days. (Id.) As such, plaintiff’s deadline to file a second amended complaint was March 23, 2018.

1 The court explicitly warned plaintiff that “[f]ailure to file either a second amended
2 complaint or a notice of voluntary dismissal by the required deadline may result in the imposition
3 of sanctions, including dismissal of the action with prejudice pursuant to Federal Rule of Civil
4 Procedure 41(b).” (Id.) Although the applicable deadline has now passed, plaintiff has failed to
5 file an amended complaint or notice of voluntary dismissal. Therefore, the court recommends
6 dismissal at this juncture.

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

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

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

1 1986) (per curiam) (stating that district courts have inherent power to control their dockets and
2 may impose sanctions including dismissal or default).

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

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

9 Id. at 1260-61; accord Pagtalunan v. Galaza, 291 F.3d 639, 642-43 (9th Cir. 2002); Ghazali, 46
10 F.3d at 53. The Ninth Circuit Court of Appeals has stated that "[t]hese factors are not a series of
11 conditions precedent before the judge can do anything, but a way for a district judge to think
12 about what to do." In re Phenylpropanolamine (PPA) Prods. Liab. Litig., 460 F.3d 1217, 1226
13 (9th Cir. 2006).

14 Although involuntary dismissal can be a harsh remedy, on balance the five relevant
15 factors weigh in favor of dismissal here. The first two Ferdik factors strongly support dismissal,
16 given that plaintiff's failure to comply with the court's order and failure to prosecute his case
17 have unreasonably delayed the progress of this litigation. Moreover, plaintiff's failure to timely
18 file a second amended complaint, as ordered, is especially egregious because he clearly knows
19 how to file motions and pleadings. Plaintiff has already filed eight motions and two complaints in
20 this matter. (See ECF Nos. 1, 3, 7, 13, 14, 16, 18, 23, 38, 46.)

21 The third Ferdik factor also favors dismissal. Defendant has already appeared, and made
22 clear its intention to have this matter resolved. Yet, plaintiff's failure to prosecute the case has
23 hampered defendant's ability to move this case forward towards resolution.

24 Additionally, the fifth Ferdik factor, which considers the availability of less drastic
25 measures, also supports dismissal. The court already attempted less drastic measures, when it
26 afforded plaintiff leave to amend. However, given plaintiff's *in forma pauperis* status, monetary
27 sanctions would be futile. Further, because plaintiff has failed to provide a complaint that states a
28 valid cause of action, the court cannot fashion any other sort of lesser sanction, at this juncture.

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

6 Consequently, dismissal is appropriate.

7 Accordingly, IT IS HEREBY RECOMMENDED that:

- 8 1. The action be dismissed with prejudice pursuant to Federal Rule of Civil Procedure
9 41(b).
- 10 2. The Clerk of Court be directed to vacate all dates and close this case.

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

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

25 IT IS SO ORDERED AND RECOMMENDED.

26 Dated: March 30, 2018

27 14/ps.17-1990.aljindi.f&R 41b dismissal

28 
KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE