

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONNIE KAY SNEED,
Plaintiff,
v.
SCOTT KERNAN, et al.,
Defendants.

No. 2:17-cv-02071-MCE-CKD P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a California inmate proceeding pro se and in forma pauperis in this federal civil rights action filed pursuant to 42 U.S.C. § 1983. Currently pending before the court is plaintiff’s second amended complaint.

I. Screening Requirement

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

/////
/////
/////

1 **II. Procedural History**

2 This case was originally filed by plaintiff on June 8, 2017.¹ It was transferred to this court
3 from the Northern District of California on October 2, 2017. ECF No. 9. The original complaint
4 in this case consisted of almost 700 pages, including the exhibits. ECF No. 1. In the screening
5 order dated February 1, 2018, plaintiff was advised to limit his complaint to a “short and plain
6 statement” in accordance with Rule 8 of the Federal Rules of Civil Procure. Plaintiff also was
7 cautioned against bringing unrelated claims against multiple defendants in a single lawsuit. ECF
8 No. 19 at 3. As a result, the complaint was dismissed but plaintiff was granted leave to amend.

9 After several extensions of time, plaintiff filed a first amended complaint which spanned
10 400 pages including exhibits. ECF No. 31. By order of October 22, 2018, the first amended
11 complaint was dismissed for failing to heed the court’s Rule 8 advisory and its warning against
12 including unrelated claims and defendants. The court’s screening order characterized the
13 allegations as a “scattershot complaint.” ECF No. 40 at 2. Plaintiff was once again granted leave
14 to amend his complaint. The court limited any second amended complaint to no more than 20
15 pages in length due to plaintiff’s prior lack of compliance with Rule 8 of the Federal Rules of
16 Civil Procedure.

17 **III. Allegations in Complaint**

18 On March 3, 2019 plaintiff filed a second amended complaint which consisted of 35
19 pages. ECF No. 47. In his second amended complaint, plaintiff names 17 individual defendants
20 including the prior director of the CDCR, as well as various medical and correctional staff at High
21 Desert State Prison. The allegations in the complaint describe events that occurred between
22 August 5, 2015 and August 8, 2017. With respect to the specific allegations in the second
23 amended complaint, plaintiff includes claims concerning adequate medical care, prison
24 conditions, lack of pay for his job as a prison porter, procedural due process violations at a prison
25 disciplinary and classification hearing, excessive force, destruction of personal property, and
26

27 ¹ Pursuant to Houston v. Lack, 487 U.S. 266 (1988), the filing date is determined based on the
28 date that plaintiff delivered the complaint to prison authorities for mailing.

1 retaliation claims. These claims are not related in time or type and do not concern any common
2 question of law or fact common to all defendants.

3 **IV. Analysis**

4 Plaintiff's second amended complaint does not satisfy the pleading requirements
5 delineated by the Federal Rules of Civil Procedure, nor does it comply with this court's prior
6 orders. Although the second amended complaint is not hundreds of pages in length like prior
7 complaints, the allegations are no more plain or comprehensible as required by Rule 8 of the
8 Federal Rules of Civil Procedure. Plaintiff has filed a confusing complaint that jumps from one
9 random event to the next involving defendants ranging from the CDCR Director to health care
10 staff and correctional officers. Despite two separate warnings in the prior screening orders,
11 plaintiff has failed to comply with this court's page limitation as well as the prohibition against
12 joining unrelated claims against numerous defendants in a single action. Plaintiff simply ignored
13 the court's instructions to focus his complaint so that the court could properly screen it as
14 required by 28 U.S.C. § 1915A(a).

15 Plaintiff has consistently failed to follow the court's orders with regard to amending the
16 complaint, and therefore it is recommended that his second amended complaint be dismissed
17 without leave to amend. "District courts have inherent power to control their dockets,"
18 Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986), and "may dismiss an action for
19 failure to comply with any order of court," Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir.
20 1992) (citing Fed. R. Civ. P. 41(b)).

21 In determining whether to dismiss a case for failure to comply with
22 a court order the district court must weigh five factors including: "(1)
23 the public's interest in expeditious resolution of litigation; (2) the
24 court's need to manage its docket; (3) the risk of prejudice to
defendants; (4) the public policy favoring disposition of cases on
their merits; and (5) the availability of less drastic alternatives.

25 Id. at 1260-61 (quoting Thompson, 782 F.2d at 831; Henderson v. Duncan, 779 F.2d 1421, 1423-
26 24 (9th Cir. 1986)). The five-factor test is a balancing test, so not all five factors need to support
27 dismissal for it to be found appropriate. Valley Eng'rs Inc. v. Elec. Eng'g Co., 158 F.3d 1051,
28 1057 (9th Cir. 1998).

1 The first two factors indicate that the case should be dismissed. It is important that the
2 court manage its docket without being subject to the routine noncompliance of litigants, Ferdik,
3 963 F.2d at 1261, and the public’s interest in expeditious resolution of litigation always weighs
4 towards dismissal, Yourish v. Cal. Amplifier, 191 F.3d 983, 990 (9th Cir. 1999). Here, the court
5 told plaintiff on multiple occasions that his amended complaint must contain a short, plain
6 statement, should omit supervisory officials who are generally not liable under § 1983, and that
7 he should not include unrelated claims and defendants in a single cause of action. Additionally,
8 this case was initiated in June 2017, and has not moved beyond the screening phase despite the
9 court’s specific instructions on how to proceed and extensions of time to allow plaintiff to comply
10 with those instructions. Plaintiff’s continued failure to comply with the instructions has led to
11 this case consuming “large amounts of the court’s valuable time that it could have devoted to
12 other major and serious . . . cases on its docket.” Ferdick, 963 F.2d at 1261. Therefore, the first
13 two factors weigh more heavily toward dismissal.

14 The risk of prejudice to defendants also weighs more heavily towards dismissal. “In
15 determining whether a defendant has been prejudiced, [the court] examine[s] whether the
16 plaintiff’s actions impair the defendant’s ability to go to trial or threaten to interfere with the
17 rightful decision of the case.” Malone v. United States Postal Serv., 833 F.2d 128, 131 (9th Cir.
18 1987) (citation omitted). The Ninth Circuit “has consistently held that the failure to prosecute
19 diligently is sufficient by itself to justify a dismissal, even in the absence of a showing of actual
20 prejudice to the defendant from the failure.” Anderson v. Air West, Inc., 542 F.2d 522, 524 (9th
21 Cir. 1976) (citing Alexander v. Pac. Mar. Ass’n, 434 F.2d 281 (9th Cir. 1970); Pearson v.
22 Dennison, 353 F.2d 24 (9th Cir. 1968)). This is because “[t]he law presumes injury from
23 unreasonable delay.” Id. (citing States S.S. Co. v. Philippine Air Lines, 426 F.2d 803, 804 (9th
24 Cir. 1970)). Here, plaintiff has repeatedly failed to obey the court’s orders regarding the
25 amendment of his complaint, resulting in the complaint remaining unserved. His repeated failure
26 to comply with the court’s instructions, as well as the Federal Rules of Civil Procedure, creates
27 undue delay, prejudices defendants, and overburdens the court.

28 ////

1 The fourth factor weighs against dismissal, since “public policy strongly favors
2 disposition of actions on the merits.” Yourish, 191 F.3d at 992 (citation and internal quotation
3 marks omitted).

4 Finally, the availability of less drastic alternatives also weighs towards dismissal. The
5 court does not need to explore every option before dismissing a case. Nevijel v. N. Coast Life
6 Ins. Co., 651 F.2d 671, 674 (9th Cir. 1981). The court only needs to ensure that “possible and
7 meaningful alternatives be reasonably explored, bearing in mind the drastic foreclosure of rights
8 that dismissal effects.” Id. In addition, “case law suggests that warning a plaintiff that failure to
9 obey a court order will result in dismissal can suffice to meet the ‘consideration of alternatives’
10 requirement.” Malone, 833 F.2d at 132 (citations omitted). Here, the court explored many
11 alternatives to dismissal. The court explicitly told plaintiff what was wrong with his complaints
12 and gave him specific instructions on how to remedy the problems on multiple occasions. In
13 addition, the court granted all of plaintiff’s motions for more time to allow him to comply. The
14 court warned plaintiff on multiple occasions that failure to comply with the court’s instructions
15 would result in a recommendation of dismissal. Plaintiff has demonstrated that he is unable or
16 unwilling to cure deficiencies identified by the court. Thus, providing him further opportunities
17 to comply appears to be futile. As a result, the court is justified in concluding that there are no
18 less drastic alternatives, and the fifth factor weighs towards dismissal.

19 Four out of the five factors of analysis weigh more heavily towards dismissal. As a result,
20 the court concludes that the circumstances of this case favor involuntary dismissal and the
21 amended complaint should be dismissed without leave to amend for failure to comply with court
22 orders.

23 **V. Plain Language Summary for Pro Se Party**

24 The following information is meant to explain this order in plain English and is not
25 intended as legal advice.

26 It is recommended that your second amended complaint be dismissed because you have
27 failed to follow the Federal Rules of Civil Procedure and the orders of this court. The court has
28 repeatedly ordered you to keep your complaint short and plain, which you have repeatedly failed

1 to do. This required the court to set a twenty-page limit for your second amended complaint, an
2 order which you also ignored. You also have not obeyed the court's instructions to leave out
3 supervisory officials and to only include defendants and claims that are properly related. As a
4 result, your complaint is far too convoluted for the court to ascertain what your claims are. Given
5 the repeated failure to follow instructions, allowing you to amend the complaint would be futile
6 because it would not fix the issues with the complaint.

7 **VI. Conclusion**

8 In accordance with the above, IT IS HEREBY RECOMMENDED that plaintiff's second
9 amended complaint (ECF No. 47) be dismissed without leave to amend for failure to comply with
10 the court's orders.

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

19 Dated: December 12, 2019

20 
21 _____
22 CAROLYN K. DELANEY
23 UNITED STATES MAGISTRATE JUDGE
24
25
26