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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMAL A. JENKINS,  
  
Plaintiff,  
  
v.  
  
SACRAMENTO COUNTY SHERIFF'S  
DEPARTMENT, et al.,  
  
Defendants.

No. 2:18-cv-0204-KJM-KJN PS  
  
ORDER AND  
FINDINGS AND RECOMMENDATIONS

On April 3, 2018, the court granted plaintiff's motion to proceed *in forma pauperis*, dismissed plaintiff's complaint with leave to amend, and provided plaintiff with 28 days to either file a first amended complaint or a notice of voluntary dismissal of the action without prejudice. (ECF No. 3.) Plaintiff was cautioned that failure to timely comply with the order may result in dismissal of the action with prejudice pursuant to Federal Rule of Civil Procedure 41(b). (Id.)

Plaintiff ultimately failed to file either an amended complaint or a notice of voluntary dismissal as ordered. 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 May 15, 2018, the court ordered plaintiff, within 21 days, to: (1) pay \$100.00 in monetary sanctions based on his

1 failure to comply with the court's orders and failure to prosecute the case; (2) show cause in  
2 writing why the action should not be dismissed with prejudice pursuant to Federal Rule of Civil  
3 Procedure 41(b) based on his failure to comply with the court's orders and failure to prosecute the  
4 case; and (3) file a first amended complaint in compliance with the court's April 3, 2018 order.  
5 (ECF No. 4.) In the alternative, if plaintiff concluded that he no longer wishes to pursue the  
6 action, he was permitted to file a notice of voluntary dismissal of the action without prejudice  
7 within 21 days, in lieu of paying the sanctions. (Id.) Plaintiff was expressly cautioned that failure  
8 to timely comply with the court's order would result in dismissal of the action with prejudice  
9 pursuant to Federal Rule of Civil Procedure 41(b). (Id.)

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

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

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

23 See also King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) (“Pro se litigants must follow the  
24 same rules of procedure that govern other litigants”) (overruled on other grounds). A district  
25 court may impose sanctions, including involuntary dismissal of a plaintiff's case pursuant to  
26 Federal Rule of Civil Procedure 41(b), where that plaintiff fails to prosecute his or her case or  
27 fails to comply with the court's orders, the Federal Rules of Civil Procedure, or the court's local  
28 rules. See Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991) (recognizing that a court “may act

1 sua sponte to dismiss a suit for failure to prosecute”); Hells Canyon Preservation Council v. U.S.  
2 Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005) (stating that courts may dismiss an action  
3 pursuant to Federal Rule of Civil Procedure 41(b) sua sponte for a plaintiff’s failure to prosecute  
4 or comply with the rules of civil procedure or the court’s orders); Ghazali v. Moran, 46 F.3d 52,  
5 53 (9th Cir. 1995) (per curiam) (“Failure to follow a district court’s local rules is a proper ground  
6 for dismissal”); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992) (“Pursuant to Federal  
7 Rule of Civil Procedure 41(b), the district court may dismiss an action for failure to comply with  
8 any order of the court”); Thompson v. Housing Auth. of City of L.A., 782 F.2d 829, 831 (9th Cir.  
9 1986) (per curiam) (stating that district courts have inherent power to control their dockets and  
10 may impose sanctions including dismissal or default).

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

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

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

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

23 Furthermore, the fifth factor, availability of less drastic alternatives, favors dismissal,  
24 because the court has already attempted less drastic alternatives. More specifically, the court,  
25 cognizant of plaintiff’s *pro se* status, declined to initially dismiss the case, but instead imposed  
26 minimal monetary sanctions. The court also clearly cautioned plaintiff regarding the potential  
27 consequences of any continued failure to comply with the court’s orders. Additionally, given  
28 plaintiff’s initial request to proceed *in forma pauperis* and his complete failure to respond to the

1 court's orders, the court is not convinced that plaintiff could or would pay any increased  
2 monetary sanctions if they were ordered.

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

6 Therefore, after carefully evaluating the Ferdik factors, the court concludes that dismissal  
7 is appropriate.

8 Accordingly, IT IS HEREBY RECOMMENDED that:


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

11 In light of those 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: June 15, 2018

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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE