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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CONDALEE MORRIS,
Plaintiff,
v.
G. MODHADDAM, et al.,
Defendants.

No. 2: 18-cv-2850 MCE KJN P

ORDER & FINDINGS &
RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. On May 5, 2020, defendant Tesluk filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (ECF No. 41.) On June 9, 2020, the undersigned granted plaintiff thirty days to file an opposition to defendant Tesluk’s motion to dismiss. (ECF No. 48.) On June 10, 2020, the court advised plaintiff that motions to dismiss shall be briefed pursuant to Local Rule 230(1). (ECF No. 49.)

For the reasons stated herein, the undersigned recommends that plaintiff’s claims against defendant Tesluk be dismissed pursuant to Federal Rule of Civil Procedure 41(b).

“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.” Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992). “In determining whether to dismiss a case for failure to comply with a court order the district court must weigh five factors including: ‘(1) the public’s interest in

1 expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of
2 prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits;
3 and (5) the availability of less drastic alternatives.” Ferdik, 963 F.2d at 1260-61 (quoting
4 Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986)); see also Ghazali v. Moran, 46
5 F.3d 52, 53 (9th Cir. 1995).

6 In determining whether to dismiss plaintiff’s claims against defendant Tesluk pursuant to
7 Rule 41(b), the court has considered the five factors set forth in Ferdik. Here, as in Ferdik, the
8 first two factors support dismissal of plaintiff’s claims against defendant Tesluk. This action had
9 been pending for approximately 1 ½ years when defendant Tesluk filed the motion to dismiss.
10 This action had reached the stage for resolution of motions to dismiss pursuant to Federal Rule of
11 Civil Procedure 12(b)(6). Plaintiff’s failure to comply with the Local Rules and the court’s June
12 9, 2020 order directing him to file an opposition within thirty days suggests that he has abandoned
13 his claims against defendant Tesluk. Further time spent by the court thereon will consume scarce
14 judicial resources in addressing claims which plaintiff demonstrates no intention to pursue.

15 Under the circumstances of this case, the third factor, prejudice to defendant Tesluk from
16 plaintiff’s failure to oppose the motion, also favors dismissal. Plaintiff’s failure to oppose the
17 motion prevents defendant Tesluk from addressing plaintiff’s substantive opposition, and would
18 delay resolution of this action, thereby causing defendant to incur additional time and expense.

19 The fifth factor also favors dismissal. The court has advised plaintiff of the requirements
20 under the Local Rules and granted ample time to oppose the pending motion. The court finds no
21 suitable alternative to dismissal of plaintiff’s claims against defendant Tesluk.

22 The fourth factor, public policy favoring disposition of cases on their merits, weighs
23 against dismissing plaintiff’s claims against defendant Tesluk as a sanction. However, for the
24 reasons set forth supra, the first, second, third, and fifth factors strongly support dismissal of
25 plaintiff’s claims against defendant Tesluk. Under the circumstances of this case, those factors
26 outweigh the general public policy favoring disposition of cases on their merits. See Ferdik, 963
27 F.2d at 1263.


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1 For the foregoing reasons, IT IS HEREBY ORDERED that defendant Tesluk’s motion to
2 dismiss (ECF No. 41) is vacated; and

3 IT IS HEREBY RECOMMENDED that plaintiff’s claims against defendant Tesluk be
4 dismissed from this action pursuant to Federal Rule of Civil Procedure 41(b).

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

13 Dated: July 16, 2020

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16 KENDALL J. NEWMAN
17 UNITED STATES MAGISTRATE JUDGE

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