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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KIMBERLY ANNE SCHEMBRI,

Plaintiff,

v.

COLORADO SPRINGS POLICE DEPT.,
et al.,

Defendants.

No. 2:23-cv-511-DJC-KJN PS

FINDINGS AND RECOMMENDATIONS TO
DISMISS WITH PREJUDICE

Plaintiff, proceeding pro se, filed a complaint against several defendants alleging violation of various federal statutes for seemingly separate harms; plaintiff also requested leave to proceed in forma pauperis.¹ (See ECF Nos. 1, 2.) The court granted plaintiff’s IFP request and dismissed the complaint for failure to state a discernable claim for relief. (ECF No. 4.) Plaintiff was given 28 days to amend the complaint and was warned that failure to do so by the required deadline could result in sanctions, including dismissal of the action with prejudice pursuant to Federal Rule of Civil Procedure 41(b). (Id. at 6.) The deadline to amend passed without a filing from plaintiff. Further, the court’s mailings have been returned as undeliverable. Given these facts, the undersigned recommends dismissing this case under Federal Rule of Civil Procedure 41(b).

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¹ The case was referred to the undersigned pursuant to Local Rule 302(c)(21).

1 A district court may impose sanctions, including involuntary dismissal of a plaintiff's case
2 pursuant to Federal Rule of Civil Procedure 41(b), where that plaintiff fails to prosecute his or her
3 case or fails to comply with the court's orders, the Federal Rules of Civil Procedure, or the court's
4 local rules. See Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991) (recognizing that a court
5 "may act sua sponte to dismiss a suit for failure to prosecute"); Hells Canyon Preservation
6 Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005) (approving sua sponte dismissals
7 under Rule 41(b)); Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam) ("Failure to
8 follow a district court's local rules is a proper ground for dismissal."); Ferdik v. Bonzelet, 963
9 F.2d 1258, 1260 (9th Cir. 1992), as amended (May 22, 1992) ("Pursuant to Federal Rule of Civil
10 Procedure 41(b), the district court may dismiss an action for failure to comply with any order of
11 the court."); Thompson v. Housing Auth. of City of L.A., 782 F.2d 829, 831 (9th Cir. 1986) (per
12 curiam) (stating that district courts have inherent power to control their dockets and may impose
13 sanctions including dismissal or default). This court's Local Rules are in accord. See E.D. Cal.
14 Local Rule 110 ("Failure of counsel or of a party to comply with these Rules or with any order of
15 the Court may be grounds for imposition by the Court of any and all sanctions authorized by
16 statute or Rule or within the inherent power of the Court."); E.D. Cal. Local Rule 183(a)
17 (providing that a pro se party's failure to comply with the Federal Rules of Civil Procedure, the
18 court's Local Rules, and other applicable law may support, among other things, dismissal of that
19 party's action); L.R. 182(f) (imposing a duty on parties to notify the court and parties of any
20 change of address).

21 A court must weigh five factors in determining whether to dismiss a case for failure to
22 prosecute, failure to comply with a court order, or failure to comply with a district court's local
23 rules. See Ferdik, 963 F.2d at 1260. These are:

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

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

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1 Here, the first two factors weigh in favor of dismissal, because this case was delayed by
2 plaintiff's failure to take the steps necessary to move this case forward. Plaintiff did not amend
3 her complaint in accordance with the court's prior order and failed to keep her address current
4 with the court. See Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991) (recognizing that a court
5 "may act sua sponte to dismiss a suit for failure to prosecute"); L.R. 182(f) (imposing a duty on
6 parties to notify the court and parties of any change of address); Carey v. King, 856 F.2d 1439,
7 1441 (9th Cir. 1988) ("A party, not the district court, bears the burden of keeping the court
8 apprised of any changes in [the party's] mailing address."). The third factor also favors dismissal,
9 because, at a minimum, defendants have been deprived of an opportunity to be promptly notified
10 of the lawsuit and prepare their defense. With the passage of time, memories fade and evidence
11 becomes stale. The fifth factor also favors dismissal because the court has already attempted less
12 drastic alternatives. Specifically, after granting plaintiff leave to proceed without paying the
13 filing fee, the court informed plaintiff of the complaint's deficiencies and granted leave to amend.
14 However, plaintiff filed nothing since the initial complaint, and has otherwise been
15 incommunicado, leaving the court with little alternative but to recommend dismissal. Given
16 plaintiff's request to proceed IFP, it is unlikely that monetary sanctions would be effective.

17 As to the fourth factor, the public policy favoring disposition of cases on their merits, that
18 factor is outweighed by the other Ferdik factors. Indeed, it is plaintiff's own failure to prosecute
19 the case and comply with the rules that precludes a resolution on the merits. Therefore, after
20 carefully evaluating the Ferdik factors, the court concludes that dismissal is appropriate.

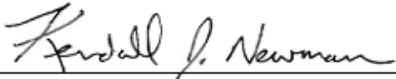
21 Accordingly, IT IS HEREBY RECOMMENDED that:

- 22 1. Plaintiff's claims be DISMISSED with prejudice pursuant to Federal Rule of Civil
23 Procedure 41(b); and
- 24 2. The Clerk of Court be directed to close this case.

25 These findings and recommendations are submitted to the United States District Judge assigned to
26 the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) days after
27 being served with these findings and recommendations, plaintiff may file written objections with
28 the court. Such a document should be captioned "Objections to Magistrate Judge's Findings and

1 Recommendations.” Plaintiff is advised that failure to file objections within the specified time
2 may waive the right to appeal the District Court’s order. Turner v. Duncan, 158 F.3d 449, 455
3 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

4 Dated: May 18, 2023

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7 KENDALL J. NEWMAN
8 UNITED STATES MAGISTRATE JUDGE

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