

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Donte Sutton v. Altamirano, et al.

Sutton · No. 1:23-cv-01633-KES-BAM (PC) · Decided October 22, 2025

OPINION

(PC)Sutton

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 DONTE SUTTON, Case No. 1:23-cv-01633-KES-BAM (PC) 12 Plaintiff, FINDINGS
AND RECOMMENDATIONS

REGARDING DEFENDANT’S MOTION TO

13 v. DISMISS FOR FAILURE TO PROSECUTE

14 ALTAMIRANO, et al., (ECF No. 32) 15 Defendants. FOURTEEN (14) DAY DEADLINE 16

17 I. Introduction 18 Plaintiff Donte Sutton (“Plaintiff”) is a state prisoner proceeding pro se and
in forma 19 pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Currently before the
Court is 20 Defendant’s motion to dismiss for failure to prosecute under Federal Rules of Civil
Procedure 37 21 and 41(b); or, in the alternative, to compel Plaintiff to respond to Defendant’s
discovery requests 22 and order Defendant’s Request for Admissions deemed submitted. (ECF
No. 32.) Plaintiff did 23 not file a response or otherwise oppose Defendant’s motion, and the
deadline to do so has now 24 expired. The motion is deemed submitted. Local Rule 230(l). 25 II.

Relevant Procedural Background 26 This action proceeds on Plaintiff’s first amended complaint
Defendant Altamirano 27 (“Defendant”) for deliberate indifference to medical care for the
incident on August 8, 2022, in 28 violation of the Eighth Amendment. 1 Discovery in this action
opened on December 2, 2024, with a deadline for filing motions 2 for summary judgment for
failure to exhaust administrative remedies of April 2, 2025, a deadline 3 to complete all discovery
of August 2, 2025, and a dispositive motion filing deadline of October 4 14, 2025. (ECF No. 24.)

5 On January 30, 2025, Defendant mailed Plaintiff a notice of deposition scheduled for

6 April 10, 2025. (ECF No. 32-1, Declaration of Jiaye Zhou (“Zhou Decl.”) ¶ 3.) On February 3,

7 2025, Defendant propounded three sets of discovery: one set of requests for admission, one set
of 8 requests for production of documents, and one set of interrogatories. (Id. ¶ 4.) 9 On March 27,
2025, defense counsel spoke with Plaintiff over the phone because 10 Defendant had yet to
receive Plaintiff’s discovery responses. Plaintiff informed defense counsel 11 that he did not
respond to the discovery on time because he had not yet received it. (Zhou Decl. ¶ 12 5.)

Defendant re-sent the discovery requests to Plaintiff on the same day and rescheduled 13 Plaintiff's deposition for June 13, 2025. (Id.) 14 Shortly thereafter, on April 1, 2025, Defendant moved to modify the discovery and 15 scheduling order to extend the deadline for filing a motion for summary judgment for failure to 16 exhaust administrative remedies and to complete all discovery due to the unexpected delay after 17 Plaintiff did not receive Defendant's discovery requests. (ECF No. 26.) The Court granted 18 Defendant's unopposed motion and extended the deadline for filing motions for summary 19 judgment for failure to exhaust administrative remedies to July 1, 2025, the deadline for 20 completion of all discovery, including filing all motions to compel discovery, to October 31, 21 2025, and the deadline for filing dispositive motions to January 12, 2026. (ECF No. 27.) 22 On April 15, 2025, the discovery requests re-sent to Plaintiff were returned to Defendant, 23 and the envelope read "refused." (Zhou Decl. ¶ 7.) Defendant re-served the discovery requests 24 for a third time on April 17, 2025, along with a letter reminding Plaintiff of his responsibilities to 25 prosecute the case and comply with the Federal Rules of Civil Procedure. (Id. ¶ 8; See ECF No. 26 28-1, Ex. 1.) Plaintiff failed to respond to the discovery requests. (Zhou Decl. ¶ 9.) 27 On June 4, 2025, Defendant filed a motion to compel Plaintiff to respond to Defendant's 28 propounded written discovery, including interrogatories and requests for production of 1 documents, set one. (ECF No. 28.) The Court issued an order directing the parties to meet and 2 confer regarding the discovery dispute, and to file a joint statement following the parties' 3 conference. The Court further stayed briefing on Defendant's motion to compel pending the 4 outcome of the parties' meet and confer. (ECF No. 29.) 5 On June 13, 2025, the parties filed their joint statement. (ECF No. 30.) The parties 6 indicated that during the meet and confer process, Plaintiff informed defense counsel that he had 7 recently placed into the Security Housing Unit ("SHU") due to an alleged inmate-on-inmate 8 attack, pending an internal investigation. As a result, Plaintiff claimed that he could not access 9 his legal paperwork. To facilitate the discovery process, Defendant agreed to send the discovery 10 requests to Plaintiff for the fourth time, by June 10, 2025. In return, Plaintiff agreed to respond to 11 the discovery requests within thirty days, by July 10, 2025. Additionally, because Plaintiff was in 12 restraints, all depositions would be limited to a maximum of two hours per day, which is too short 13 to conclude a deposition, and the June 12, 2025 deposition would not proceed as planned. To 14 schedule a new deposition, Plaintiff agreed to inform Defendant within three days after he was 15 released back to the general population. As of the date of the joint statement, Plaintiff was 16 scheduled to be released back to the general population by August 19. The parties requested that 17 the Court extend the deadline to file a motion for summary judgment based on failure to exhaust 18 administrative remedies to September 8, 2025, or sixty days after Plaintiff's deadline to respond 19 to Defendant's discovery requests. (Id.) 20 Based on the parties' joint statement, and because it appeared that the discovery disputes 21 would be fully resolved, the Court denied Defendant's motion to compel as moot. (ECF No. 31.) 22 The Court extended the deadline for Plaintiff to serve responses to Defendant's Request for 23 Production of Documents

and Interrogatories, Set One, to July 10, 2025, and extended the 24 deadline for filing motions for summary judgment for failure to exhaust administrative remedies 25 from July 1, 2025 to September 8, 2025. (Id.) All other requirements set forth in the Court's 26 December 2, 2024 discovery and scheduling order and April 2, 2025 order, (ECF Nos. 24, 27), 27 were to remain in place. (Id.) 28 On July 15, 2025, defense counsel called Plaintiff to discuss the outstanding discovery 1 requests. Plaintiff admitted that he did not work on it. (Zhou Decl. ¶ 13.) 2 On August 18, 2025, Defendant filed the instant motion to dismiss or, in the alternative, to 3 compel Plaintiff to respond to Defendant's discovery request and order Defendant's requests for 4 admissions deemed admitted. (ECF No. 32.) Plaintiff did not file a response to the motion. On 5 September 12, 2025, Defendant filed a notice of Plaintiff's failure to oppose the motion to dismiss 6 and requested that Court deem Plaintiff's failure to file any opposition as a waiver and dismiss 7 this action in its entirety with prejudice. (ECF No. 33.) 8 III. Defendant's Motion to Dismiss 9 Defendant moves to dismiss for Plaintiff's failure to prosecute and as a sanction based on 10 Plaintiff's repeated failure to respond to Defendant's discovery requests and to comply with the 11 Court's order. Defendant contends that Plaintiff's continuous, dilatory tactics have inhibited an 12 expeditious resolution of this matter, interfered with the Court's need to manage its docket, and 13 severely prejudiced Defendant. (ECF No. 32 at 3.) 14 A. Legal Standard 15 The Federal Rules of Civil Procedure specifically contemplate dismissal as a sanction for 16 failing to comply with the rules of discovery or a court order. Rule 37 permits a court to dismiss 17 an action or proceeding if a party fails to obey a discovery order or fails to respond to 18 interrogatories propounded under Rule 33 or requests for inspection under Rule 34. Fed. R. Civ. 19 P. 37(d)(1)(A)(ii), 37(b)(2)(A)(v). "Dismissal, however, is authorized only in 'extreme 20 circumstances' and only where the violation is 'due to willfulness, bad faith, or fault of the 21 party.'" *In re Exxon Valdez*, 102 F.3d 429, 432 (9th Cir. 1996) (citation omitted). Similarly, 22 Rule 41(b) also provides for dismissal of an action for failure to prosecute or failure to comply 23 with the rules of civil procedure or a court order. Fed. R. Civ. P. 41(b). 24 Additionally, Local Rule 110 provides that the failure of a party to comply with any local 25 rule or order of the court may result in the imposition of "any and all sanctions authorized by 26 statute or Rule or within the inherent power of the Court." District courts have the inherent 27 power to control their dockets and "[i]n the exercise of that power they may impose sanctions 28 including, where appropriate ... dismissal." *Thompson v. Hous. Auth.*, 782 F.2d 829, 831 (9th Cir. 1 1986). Terminating sanctions may be warranted where "discovery violations threaten to interfere 2 with the rightful decision of the case." *Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills*, 3 482 F.3d 1091, 1097 (9th Cir. 2007). 4 B. Willfulness and Bad Faith 5 Plaintiff's pro se status does not excuse intentional non-compliance with the Federal Rules 6 of Civil Procedure or court orders. See *Lindstedt v. City of Granby*, 238 F.3d 933, 937 (8th Cir. 7 2000) (affirming sanction of dismissal, holding that "[a] pro se litigant is bound by the litigation 8 rules as is a lawyer. . . ."). In

the instant action, Plaintiff has been aware since the Court's issuance of the initial discovery and scheduling order that he would be required to respond to written discovery requests. (ECF No. 24.) Plaintiff also was warned multiple times that he was required to act in good faith during the course of discovery and that the failure to do so may result in the payment of expenses or other appropriate sanctions authorized by the Federal Rules of Civil Procedure or the Local Rules, which may include dismissal. (See ECF No. 24 at 1-2; ECF No. 29 at 3.)

Defendant has served Plaintiff at least three times with the written discovery requests at issue. The first time Defendant sent the requests, Plaintiff reportedly failed to receive them. Defendant therefore sent the discovery requests to Plaintiff a second time, rescheduled Plaintiff's deposition, and requested modification of the discovery and scheduling order. (Zhou Decl. ¶ 5; ECF No. 26.) The Court granted the modification to accommodate the unexpected delay in Plaintiff's receipt of the written discovery requests and extended the relevant deadlines. (ECF No. 27.) Despite these accommodations, the discovery requests sent to Plaintiff a second time were returned to Defendant as "refused." (Zhou Decl. ¶ 7.) Defendant then sent the discovery requests to Plaintiff for a third time. (Id. ¶ 8.) Plaintiff again failed to respond, prompting Defendant to file a motion to compel. (ECF No. 28.) The parties met and conferred as directed by the Court, with Defendant agreeing to send the written discovery request to Plaintiff for a fourth time and Plaintiff agreeing to respond by July 10, 2025. (ECF No. 30.) The Court subsequently ordered Plaintiff to respond to Defendant's written discovery requests by July 10, 2025. (ECF No. 31.) Plaintiff again failed to respond and when questioned by defense counsel admitted that he did not work on it. (Zhou Decl. ¶ 13.) Plaintiff's conduct was not due to issues outside of Plaintiff's control. Rather, the record reflects that Plaintiff either refused to receive his mail or refused to work on his responses. 4 "[D]isobedient conduct not shown to be outside the party's control is by itself sufficient to establish willfulness, bad faith, or fault." *Sanchez v. Rodriguez*, 298 F.R.D. 460, 463 (C.D. Cal. 6 2014). Further, Plaintiff has not filed an opposition to Defendant's motion to dismiss, such that 7 the Court may evaluate his reasons for not responding, and thus appears to have abandoned his 8 prosecution of this action. 9 Based on the foregoing, the Court concludes that Plaintiff's conduct constitutes willful 10 disregard of his discovery obligations and the Court's orders, and bad faith in an effort to avoid 11 responding to written discovery. The Court now turns to the issue of whether terminating 12 sanctions are appropriate. 13 C. Terminating Sanctions 14 The Court must consider five factors in deciding whether terminating sanctions are 15 warranted: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to 16 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring 17 disposition of cases on their merits; and (5) the availability of less drastic alternatives. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992); *Henderson v. Duncan*, 779 F.2d 1421, 1423 19 (9th Cir. 1986); see also *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002). 20 The public's interest in expeditious resolution of

litigation weighs in favor of dismissal. 21 The Ninth Circuit has explained that “[t]he public’s interest in expeditious resolution of litigation 22 always favors dismissal.” *Pagtalunan*, 291 F.3d at 642 (citation omitted). Here, Plaintiff’s 23 conduct has delayed the proceedings and has deprived Defendant of his right to written discovery. 24 The Court has had to delay discovery deadlines multiple times because of Plaintiff’s refusal to 25 respond to discovery. Thus, the first factor weighs in favor of dismissal of this action. 26 The second factor focuses on whether a particular case has “consumed large amounts of [a 27 district] court’s valuable time that it could have devoted to other major and serious criminal and 28 civil cases on its docket.” See *Ferdik*, 963 F.2d at 1261 (“It is incumbent upon us to preserve the 1 district courts’ power to manage their dockets without being subject to the endless vexatious 2 noncompliance of litigants like *Ferdik*.”). As detailed in this order, the Court has devoted time 3 and resources addressing modifications of the scheduling order and a motion to compel discovery 4 due to Plaintiff’s failure to respond to written discovery. Further, because of Plaintiff’s conduct, 5 the Court also is required to devote substantial time to assess whether dismissal is appropriate. 6 Plaintiff’s conduct has diverted the Court from other cases and has required the Court to expend 7 its limited resources addressing his failure to respond to written discovery. The Court cannot 8 effectively manage its docket if Plaintiff fails to comply with court orders or with his discovery 9 obligations. Thus, the second factor also weighs in favor of dismissal. 10 The third factor—prejudice to Defendant—also favors dismissal. “A defendant suffers 11 prejudice if the plaintiff’s actions impair the defendant’s ability to go to trial or threaten to 12 interfere with the rightful decision of the case.” In re *Phenylpropanolamine (PPA) Prods. Liab.* 13 *Litig.*, 460 F.3d 1217, 1227 (9th Cir.2006) (quoting *Adriana Int’l Corp. v. Thuerren*, 913 F.2d 14 1406, 1412 (9th Cir.1990)). Defendant has been unable to obtain discovery of evidence and facts, 15 preventing him from evaluating and defending against Plaintiff’s claims. Defendant also has 16 been required to expend time and resources to seek Plaintiff’s responses, and Plaintiff’s repeated 17 failure to respond has resulted in delay of the proceedings. 18 The fourth factor usually weighs against dismissal because public policy favors 19 disposition on the merits. In re *PPA*, 460 F.3d at 1228; *Pagtalunan*, 291 F.3d at 643. However, 20 “this factor lends little support to a party whose responsibility it is to move a case toward 21 disposition on the merits but whose conduct impedes progress in that direction,” which is the case 22 here. In re *PPA*, 460 F.3d at 1228 (citation omitted). 23 Finally, a district court must consider the impact of a sanction and whether a less severe 24 sanction would adequately address a party’s failure to engage in the discovery process. *Malone v. 25 U.S. Postal Serv.*, 833 F.2d 128, 131–32 (9th Cir. 1987). The Court has considered lesser 26 sanctions, but finds no lesser sanction is warranted. Evidentiary sanctions would be ineffective, 27 as Plaintiff would still be able to testify to information that he withheld from Defendant and the 28 Court would have no practical way of excluding such testimony. Monetary sanctions are also 1 ineffective because of Plaintiff’s in forma pauperis status. He would likely be unable to pay any 2 monetary sanctions. Additionally, the Court warned Plaintiff about the consequences of the 3

failure to act in good faith during the course of discovery, but Plaintiff's conduct, including his failure to respond to the motion to dismiss, has indicated no intent to comply with the Court's orders or to respond to written discovery. Thus, issuing an order to compel Plaintiff's responses and/or continuing discovery deadlines is likely to have little effect. The Court finds that there are no other, lesser sanctions that would be satisfactory or effective. Further, the Court's orders expressly warned Plaintiff that if he failed to act in good faith during the course of discovery, then he may be subject to sanctions, including terminating sanctions. (ECF Nos. 24, 29.) The Court's warning to a party of the consequences of his bad faith or dilatory conduct satisfies the "considerations of the alternatives" requirement. See Henderson, 779 F.2d at 1424. Plaintiff had adequate warning that dismissal could result from his lack of good faith conduct in discovery. IV. Conclusion and Recommendation Having considered the relevant factors, the Court finds that terminating sanctions are justified and HEREBY RECOMMENDS that: 1. Defendant's motion to dismiss for failure to prosecute under Rule 37 and 41(b), (ECF No. 32), be GRANTED.

2. Defendant's alternate request to compel Plaintiff to respond to Defendant's discovery requests and order Defendant's requests for admissions deemed admitted be DENIED as moot. 3. This action be DISMISSED with prejudice. These Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen (14) days after being served with these Findings and Recommendations, the parties may file written objections with the court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Objections, if any, shall not exceed fifteen (15) pages or include exhibits. Exhibits may be referenced by document and page number if already in the record before the Court. Any pages filed in excess of the 15-page limit may not be considered. The parties are advised that failure to file objections within the specified time may result in the waiver of the "right to challenge the magistrate's factual findings" on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)). IT IS SO ORDERED.

Dated: October 22, 2025 /s/ Barbara A. McAuliffe _

UNITED STATES MAGISTRATE JUDGE

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