

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
CENTRAL DISTRICT OF CALIFORNIA

JESSIE JEFFRIES,)	Case No. CV 12-1351 R(JC)
Plaintiff,)	MEMORANDUM OPINION AND
v.)	ORDER DISMISSING ACTION
K. FIELDS et al.,)	
Defendants.)	

On August 10, 2012, plaintiff Jessie Jeffries (“plaintiff”) – who is in custody, is proceeding *pro se*, and has paid the filing fee – filed the operative First Amended Complaint pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), asserting claims against multiple defendants connected with the Federal Correctional Complex in Lompoc, California where plaintiff was formerly housed. The Court thereafter dismissed certain defendants and claims in the First Amended Complaint. On June 18, 2014, the remaining defendants filed an Answer to the remaining claims in the First Amended Complaint.

On June 18, 2014, the assigned United States Magistrate Judge (“Magistrate Judge”) issued a Case Management and Scheduling Order (“Case Management

///

1 Order”) which required, among other things, that the parties file a status report no
2 later than August 18, 2014. Defendants timely filed a status report on August 15,
3 2014, noting therein that plaintiff had failed to respond to outstanding
4 interrogatories, requests for admission and requests for the production of
5 documents, and that plaintiff’s responses thereto had been due on August 4, 2014.
6 Plaintiff failed to file the required status report.

7 In light of plaintiff’s failure to file the requisite status report, the Magistrate
8 Judge, on September 4, 2014, issued an Order to Show Cause directing plaintiff to
9 file the requisite status report and to show cause in writing, on or before September
10 18, 2014, as to why he had failed to file the required status report and why the Court
11 should not impose a sanction, including dismissal of this case for failure to
12 prosecute, based upon plaintiff’s failure to file the status report. The Order to Show
13 Cause expressly cautioned plaintiff that the failure to comply with the Order to
14 Show Cause and/or to show good cause, might result in the dismissal of this action
15 for failure to prosecute. To date, plaintiff has not filed a status report or a response
16 to the Order to Show Cause and the deadline to do so has passed.

17 It is well-established that a district court has authority to dismiss a plaintiff’s
18 action because of his failure to prosecute or to comply with court orders. See Fed.
19 R. Civ. P. 41(b); Link v. Wabash Railroad Co., 370 U.S. 626, 629-30 (1962);
20 Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir.), cert. denied, 506 U.S. 915
21 (1992). In determining whether to dismiss an action for failure to prosecute or
22 failure to comply with court orders, a district court must consider several factors:
23 (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need
24 to manage its docket; (3) the risk of prejudice to defendants; (4) the public policy
25 favoring disposition of cases on their merits; and (5) the availability of less drastic
26 alternatives. See In re Eisen, 31 F.3d 1447, 1451 (9th Cir. 1994) (failure to
27 prosecute); Ferdik, 963 F.2d at 1260-61 (failure to comply with court orders).

28 ///

1 The Court finds that the first two factors – the public’s interest in
2 expeditiously resolving this litigation and the Court’s interest in managing the
3 docket, weigh in favor of dismissal. The Court cannot hold this case in abeyance
4 indefinitely awaiting plaintiff’s response to the Court’s directives. The third factor,
5 risk of prejudice to defendants, also weighs in favor of dismissal since a
6 presumption of injury arises from the occurrence of unreasonable delay in
7 prosecuting an action. Anderson v. Air West, Inc., 542 F.2d 522, 524 (9th Cir.
8 1976). The fourth factor, the public policy favoring disposition of cases on their
9 merits, is greatly outweighed by the factors in favor of dismissal discussed herein.
10 Finally, as plaintiff has already been cautioned of the consequences of his failure to
11 prosecute and his failure to comply with the OSC, has been afforded the
12 opportunity to do so, and has not responded, no sanction lesser than dismissal
13 without prejudice is feasible.

14 IT IS THEREFORE ORDERED that this action is dismissed based upon
15 plaintiff’s failure to prosecute and failure to comply with the OSC.

16 IT IS SO ORDERED.

17 DATED: October 7, 2014



20 HONORABLE MANUEL L. REAL
21 UNITED STATES DISTRICT JUDGE
22
23
24
25
26
27
28