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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

VANTRAE GREGORY,  
  
                                Plaintiff,  
  
                                v.  
  
DOMINGO URIBE, JR., Warden, et al.,  
  
                                Defendants.

No. CV 12-1624-SVW (PLA)  
  
**ORDER DISMISSING ACTION FOR  
FAILURE TO PROSECUTE AND FOLLOW  
COURT ORDERS**

**I.  
BACKGROUND**

On February 5, 2014, this Court adopted the Magistrate Judge’s Final Report and Recommendation in this matter and entered judgment dismissing Mr. Gregory’s habeas petition with prejudice. (ECF Nos. 36-37). This Court had determined that the California Court of Appeal’s denial of his challenges to a prison disciplinary conviction that resulted in a loss of good conduct time was not contrary to, or an unreasonable application of, clearly established federal law. The Ninth Circuit Court of Appeals granted a certificate of appealability and appointed counsel for purposes of the appeal. (ECF No. 47). On November 15, 2016, that court then granted appellees’ unopposed motion to vacate and remand in light of the Ninth Circuit’s July 26, 2016, decision in Nettles v. Grounds, 830 F.3d 922, 931-35 (9th Cir. 2016) (en banc) (holding that challenges to prison discipline

1 violations by prisoners with indeterminate sentences fall outside the core of habeas corpus, and that  
2 such challenges must be brought under 42 U.S.C. § 1983, if at all).

3 After the matter was remanded to this Court, on December 12, 2016, the Magistrate Judge  
4 assigned to this action issued an Order requiring Mr. Gregory (no referred to as “plaintiff”) to inform  
5 the Court, no later than January 8, 2017, whether, consistent with the Nettles decision, he wished  
6 to proceed in this action as a civil rights case pursuant to 42 U.S.C. § 1983, or whether he wished  
7 to withdraw his Complaint. (ECF No. 56). After an extension of time was requested and granted,  
8 plaintiff’s response to the December 12, 2016, Order was due no later than February 28, 2017. (ECF  
9 Nos. 56, 64, 65). Plaintiff was advised in the December 12, 2016, Order, and again in a January 24,  
10 2017, Order granting plaintiff’s request for extension of time to respond, that failure to timely comply  
11 with the December 12, 2016, Order would result in the action being dismissed for failure to prosecute  
12 and/or failure to follow court orders. (ECF Nos. 56, 65). On March 13, 2017, after the time to  
13 respond to the December 12, 2016, Order had passed with no action taken by plaintiff, the Magistrate  
14 Judge ordered plaintiff to show cause, no later than March 27, 2017, why this action should not be  
15 dismissed for failure to prosecute and/or failure to follow court orders. (ECF No. 67). Plaintiff was  
16 informed that filing a response to the December 12, 2016, Order, as well as payment of the required  
17 filing fee or the submission of a request to proceed in forma pauperis, would be deemed compliance  
18 with the Order to Show Cause. (Id.).

19 As of the date of this Order, plaintiff has not filed a response to the March 13, 2017, Order to  
20 Show Cause, or otherwise responded to the December 12, 2016, Order, and the time to do so has  
21 expired.

## 22 23 II.

### 24 DISCUSSION

25 It is well established that a district court has authority to dismiss a plaintiff’s action because  
26 of his or her failure to prosecute or to comply with court orders. See Fed. R. Civ. P. 41(b); Link v.  
27 Wabash R.R. Co., 370 U.S. 626, 629-30, 82 S. Ct. 1386, 8 L. Ed. 2d 734 (1962) (holding that a  
28 court’s authority to dismiss for lack of prosecution is necessary to prevent undue delays in the

1 disposition of pending cases and to avoid congestion in the calendars of the district courts); Ferdik  
2 v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992) (holding that a district court may dismiss an action  
3 for failure to comply with any order of the court).

4 In determining whether to dismiss this action due to plaintiff's failure to prosecute or to comply  
5 with court orders, the Court must consider the following five factors: "(1) the public's interest in  
6 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice  
7 to the defendants; (4) the public policy favoring disposition of cases on their merits[;] and (5) the  
8 availability of less drastic sanctions." Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988) (per curiam)  
9 (citation and quotation marks omitted); see also In re Eisen, 31 F.3d 1447, 1451 (9th Cir. 1994)  
10 (failure to prosecute); Ferdik, 963 F.2d at 1260-61 (failure to comply with court orders).

11 The first two factors -- the public's interest in expeditious resolution of litigation and the Court's  
12 need to manage its docket -- weigh in favor of dismissal. Plaintiff's failure to file a response to the  
13 December 12, 2016, Order, or to the March 13, 2017, Order to Show Cause, hinders the Court's  
14 ability to move this case toward disposition and indicates that plaintiff does not intend to litigate this  
15 action diligently.

16 The third factor -- prejudice to defendants -- also weighs in favor of dismissal. A rebuttable  
17 presumption of prejudice to defendants arises when a plaintiff unreasonably delays prosecution of  
18 an action. Eisen, 31 F.3d at 1452-53. Nothing suggests that such a presumption is unwarranted in  
19 this case.

20 The fourth factor -- public policy in favor of deciding cases on their merits -- weighs against  
21 dismissal. However, it is plaintiff's responsibility to move his case toward a disposition at a  
22 reasonable pace and to avoid dilatory and evasive tactics. See Morris v. Morgan Stanley Co., 942  
23 F.2d 648, 652 (9th Cir. 1991). By failing to respond to the December 12, 2016, Order, or to the  
24 March 13, 2017, Order to Show Cause, plaintiff has not discharged this responsibility. In these  
25 circumstances, the public policy favoring resolution of disputes on the merits does not outweigh  
26 plaintiff's failure to comply with court orders.

27 The fifth factor -- availability of less drastic sanctions -- weighs in favor of dismissal. The  
28 Magistrate Judge first attempted to avoid dismissal when he issued the December 12, 2016, Order

1 giving plaintiff an opportunity to inform the Court whether he wished to proceed in this action as a civil  
2 rights case pursuant to 42 U.S.C. § 1983, or whether he wished to withdraw his Complaint (ECF No.  
3 56), and again when the Magistrate Judge granted plaintiff's request for an extension of time to  
4 respond to the December 12, 2016, Order. (ECF No. 65). The Magistrate Judge again attempted  
5 to avoid dismissal when he issued the March 13, 2017, Order to Show Cause. (ECF No. 67).  
6 Nonetheless, as of the date of this Order, plaintiff has failed to respond to either the December 12,  
7 2016, Order, or the March 13, 2017, Order to Show Cause, as required by those Orders.


8 Taking all of the above factors into account, dismissal for failure to prosecute and to follow  
9 court orders is appropriate. Such a dismissal, however, should not be entered unless plaintiff has  
10 been notified that dismissal is imminent. See W. Coast Theater Corp. v. City of Portland, 897 F.2d  
11 1519, 1523 (9th Cir. 1990). In this case, plaintiff was cautioned about the possibility of dismissal in  
12 the December 12, 2016, Order, in the January 24, 2017, Order granting his request for an extension  
13 of time to respond to the December 12, 2016, Order, and again in the March 13, 2017, Order to  
14 Show Cause.

15  
16 **III.**

17 **CONCLUSION**

18 IT IS THEREFORE ORDERED that this action is **dismissed without prejudice** for failure  
19 to prosecute, and for failure to follow court orders.

20  
21 DATED: April 3, 2017

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24 HONORABLE STEPHEN V. WILSON  
25 UNITED STATES DISTRICT JUDGE  
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