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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRYAN E. RANSOM,
Plaintiff,

v.

DEPARTMENT OF CORRECTIONS AND
REHABILITATION, et al.,
Defendants.

Case No. 1:11-cv-0068-AWI-MJS (PC)

**ORDER VACATING ORDER TO SHOW
CAUSE AND**

**FINDINGS & RECOMMENDATIONS TO
DISMISS ACTION FOR FAILURE TO
PROSECUTE AND FAILURE TO OBEY
COURT ORDER**

(ECF NO. 155)

FOURTEEN DAY DEADLINE

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 28 U.S.C. § 1983. On March 21, 2016, Defendants filed a motion for summary judgment. To date, Plaintiff has not opposed the motion or filed a statement of non-opposition. On September 12, 2016, the Court ordered Plaintiff to file an opposition or statement of non-opposition within thirty days and warned Plaintiff that failure to do so could result in dismissal of his action with prejudice. (ECF No. 155.) The thirty day deadline passed without Plaintiff either filing an opposition or statement of non-opposition, or seeking an extension of time to do so.

Local Rule 110 provides that “failure of counsel or of a party to comply with these Rules or with any order of the Court may be grounds for imposition by the Court of any

1 and all sanctions . . . within the inherent power of the Court.” District courts have the
2 inherent power to control their dockets and “in the exercise of that power, they may
3 impose sanctions including, where appropriate . . . dismissal of a case.” Thompson v.
4 Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with
5 prejudice, based on a party’s failure to prosecute, failure to obey a court order, or failure
6 to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)
7 (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-
8 61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of
9 a complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for
10 failure to comply with local rule requiring pro se plaintiffs to keep court apprised of
11 address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal
12 for failure to comply with a court order); Henderson v. Duncan, 779 F.2d 1421, 1424
13 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

14 In determining whether to dismiss an action for lack of prosecution, failure to
15 obey a court order, or failure to comply with local rules, the Court must consider several
16 factors: (1) the public’s interest in expeditious resolution of litigation, (2) the Court’s
17 need to manage its docket, (3) the risk of prejudice to the defendants, (4) the public
18 policy favoring disposition of cases on their merits, and (5) the availability of less drastic
19 alternatives. Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone,
20 833 F.2d at 130; Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

21 In the instant case, the public’s interest in expeditiously resolving this litigation
22 and the Court’s interest in managing its docket weigh in favor of dismissal. The third
23 factor, risk of prejudice to Defendants, also weighs in favor of dismissal, since a
24 presumption of injury arises from the occurrence of unreasonable delay in prosecuting
25 this action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor –
26 public policy favoring disposition of cases on their merits – is greatly outweighed by the
27 factors in favor of dismissal discussed herein. Finally, as for the availability of lesser
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1 sanctions, at this stage in the proceedings there is little available which would constitute
2 a satisfactory lesser sanction while preserving scarce Court resources. Plaintiff has not
3 paid the filing fee for this action and is likely unable to pay, making monetary sanctions
4 of little use.

5 Based on the foregoing, it is HEREBY ORDERED that the September 12, 2016,
6 order to show cause (ECF No. 155) is VACATED; and

7 IT IS HEREBY RECOMMENDED that the action be dismissed, with prejudice, for
8 failure to obey a court order and failure to prosecute.

9 The findings and recommendation are submitted to the United States District
10 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
11 fourteen (14) days after being served with the findings and recommendation, any party
12 may file written objections with the Court and serve a copy on all parties. Such a
13 document should be captioned "Objections to Magistrate Judge's Findings and
14 Recommendation." Any reply to the objections shall be served and filed within fourteen
15 (14) days after service of the objections. The parties are advised that failure to file
16 objections within the specified time may result in the waiver of rights on appeal.
17 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923
18 F.2d 1391, 1394 (9th Cir. 1991)).

19
20 IT IS SO ORDERED.

21
22 Dated: October 17, 2016

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE