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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CLAY EDWARD LOPEZ,  
Plaintiff,  
v.  
S. SHIESHA, et al.,  
Defendants.

CASE No. 1:12-cv-00076-MJS  
ORDER DISMISSING PLAINTIFF'S  
COMPLAINT FOR FAILURE TO COMPLY  
WITH A COURT ORDER  
(ECF No. 23)  
CLERK SHALL CLOSE THE CASE

Plaintiff Clay Edward Lopez, a former state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on January 17, 2012. (ECF No. 1.) Plaintiff consented to Magistrate Judge jurisdiction. (ECF No. 5.)

On March 28, 2013, the Court issued an order dismissing certain claims and Defendants with prejudice and directing the Clerk of the Court to send Plaintiff service documents necessary to proceed on Plaintiff's remaining cognizable claims. (ECF No. 22.) Plaintiff was instructed to complete and return the service documents within thirty days. (Id.) The April 28, 2013 deadline passed without Plaintiff submitting the service documents or requesting an extension of time to do so.

On September 18, 2013, the Court ordered Plaintiff to file the service documents by October 7, 2013. (ECF No. 23.) In the alternative, Plaintiff was to show cause as to why his case should not be dismissed for failure to comply with a Court Order and failure

1 to prosecute. (Id.) The October 7, 2013 deadline has passed and Plaintiff has not  
2 complied with or otherwise responded to the Court's Order.

3 Local Rule 110 provides that "failure of counsel or of a party to comply with these  
4 Rules or with any order of the Court may be grounds for imposition by the Court of any  
5 and all sanctions . . . within the inherent power of the Court." District courts have the  
6 inherent power to control their dockets and "in the exercise of that power, they may  
7 impose sanctions including, where appropriate . . . dismissal [of a case]." Thompson v.  
8 Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with  
9 prejudice, based on a party's failure to prosecute an action, failure to obey a court order,  
10 or failure to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th  
11 Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d  
12 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring  
13 amendment of a complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988)  
14 (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court  
15 apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987)  
16 (dismissal for failure to comply with a court order); Henderson v. Duncan, 779 F.2d 1421,  
17 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local  
18 rules).

19 In determining whether to dismiss an action for lack of prosecution, failure to obey  
20 a court order, or failure to comply with local rules, the Court must consider several  
21 factors: (1) the public's interest in expeditious resolution of litigation; (2) the Court's need  
22 to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy  
23 favoring disposition of cases on their merits; and (5) the availability of less drastic  
24 alternatives. Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone,  
25 833 F.2d at 130; Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

26 In the instant case, the Court finds that the public's interest in expeditiously  
27 resolving this litigation and the Court's interest in managing its docket weigh in favor of  
28 dismissal. The third factor, risk of prejudice to defendants, also weighs in favor of

1 dismissal, since a presumption of injury arises from the occurrence of unreasonable  
2 delay in prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976).  
3 The fourth factor - public policy favoring disposition of cases on their merits - is greatly  
4 outweighed by the factors in favor of dismissal discussed herein. Finally, a court's  
5 warning to a party that his failure to obey the court's order will result in dismissal satisfies  
6 the "consideration of alternatives" requirement. Ferdik, 963 F.2d at 1262; Malone, 833 at  
7 132-33; Henderson, 779 F.2d at 1424. The Court's Order expressly warned Plaintiff that  
8 failure to respond would result in dismissal of this action for failure to obey a court order  
9 and failure to prosecute. (ECF No. 23.) Thus, Plaintiff had adequate warning that  
10 dismissal would result from his noncompliance with the Court's Order.

11 Accordingly, the Court hereby ORDERS that this action be dismissed, without  
12 prejudice, for failure to comply with the Court's September 18, 2013 Order. (ECF No.  
13 23.)

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16 IT IS SO ORDERED.

17 Dated: October 21, 2013

18 /s/ Michael J. Seng  
19 UNITED STATES MAGISTRATE JUDGE  
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