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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DANNY JAMES COHEA,
Plaintiff,
v.
NANCY GRANNIS, et al.,
Defendants.

CASE NO. 1:12-cv-01739-LJO-MJS
FINDINGS AND RECOMMENDATIONS
THAT THIS ACTION BE DISMISSED FOR
FAILURE TO OBEY A COURT ORDER
(ECF NO. 13)
OBJECTIONS DUE WITHIN FOURTEEN
DAYS

Plaintiff Danny James Cohea is a state prisoner proceeding pro se in this civil rights actions pursuant to 42 U.S.C. § 1983.

On August 30, 2013, the Court found that Plaintiff was not eligible to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 because he had had three or more earlier federal actions dismissed for failure to state a claim and he was not under imminent danger of serious physical injury at the time the Complaint was filed. (ECF No. 13.) Plaintiff was to pay the \$400.00 filing fee in full by September 14, 2013. (Id.) In lieu of submitting the filing fee, Plaintiff filed a twenty-eight page document objecting to the Court's August 30, 2013, order. (ECF No. 14.) Plaintiff has failed to obey the Court's August 30, 2013, order.

Local Rule 110 provides that "failure of counsel or of a party to comply with these

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

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

23 In the instant case, the Court finds that the public’s interest in expeditiously
24 resolving this litigation and the Court’s interest in managing its docket weigh in favor of
25 dismissal. The third factor, risk of prejudice to defendants, also weighs in favor of
26 dismissal, since a presumption of injury arises from the occurrence of unreasonable
27 delay in prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976).
28 The fourth factor -- public policy favoring disposition of cases on their merits -- is greatly

1 outweighed by the factors in favor of dismissal discussed herein. Finally, a court's
2 warning to a party that his failure to obey the court's order will result in dismissal satisfies
3 the "consideration of alternatives" requirement. Ferdik, 963 F.2d at 1262; Malone, 833 at
4 132-33; Henderson, 779 F.2d at 1424. The Court's order expressly stated: "If Plaintiff
5 fails to pay the \$400.00 filing fee in full within fourteen days, this action shall be
6 dismissed, without prejudice." (ECF No. 13.) Thus, Plaintiff had adequate warning that
7 dismissal would result from his noncompliance with the Court's order.

8 Based on the foregoing, the Court RECOMMENDS that this action be
9 DISMISSED based on Plaintiff's failure to obey a court order.

10 These Findings and Recommendations are submitted to the United States District
11 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).
12 Within fourteen (14) days after being served with these Findings and Recommendations,
13 any party may file written objections with the Court and serve a copy on all parties. Such
14 a document should be captioned "Objections to Magistrate Judge's Findings and
15 Recommendations." The parties are advised that failure to file objections within the
16 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst,
17 951 F.2d 1153, 1156 (9th Cir. 1991).

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21 IT IS SO ORDERED.

22 Dated: September 17, 2013

/s/ Michael J. Seng
23 UNITED STATES MAGISTRATE JUDGE
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