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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 (PC)

**ORDER TO SHOW CAUSE WHY ACTION
SHOULD NOT BE DISMISSED WITH
PREJUDICE FOR FAILURE TO OBEY A
COURT ORDER AND FAILURE TO
PROSECUTE**

(ECF No. 31)

FOURTEEN (14) DAY DEADLINE

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. On April 15, 2014, the District Judge assigned to the case denied Plaintiff's motion for recusal and motion to stay, denied Plaintiff's motion for temporary restraining order, denied Plaintiff's motion for clarification and review of the undersigned's denial of his motion for reconsideration, and ordered Plaintiff to file an amended complaint within thirty days. (ECF No. 31.) Plaintiff filed a motion for reconsideration. (ECF No. 32.) That motion also was denied by the District Judge. (ECF No. 33.)

The thirty day deadline for Plaintiff to file an amended complaint has passed without Plaintiff either filing an amended pleading or seeking an extension of time to do

1 so.

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

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

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

1 public policy favoring disposition of cases on their merits -- is greatly outweighed by the
2 factors in favor of dismissal discussed herein. Finally, as for the availability of lesser
3 sanctions, at this stage in the proceedings there is little available which would constitute
4 a satisfactory lesser sanction while preserving scarce Court resources. Plaintiff has not
5 paid the filing fee for this action and is likely unable to pay, making monetary sanctions
6 of little use.

7 Accordingly, it is HEREBY ORDERED THAT:

- 8 1. Within fourteen (14) days of service of this Order, Plaintiff shall either show
9 cause as to why this action should not be dismissed with prejudice for
10 failure to comply with the Court's order (ECF No. 31) and failure to
11 prosecute, or file an amended complaint, and
- 12 2. If Plaintiff fails to show cause or file an amended complaint, the
13 undersigned will recommend that this action be dismissed, with prejudice.

14
15 IT IS SO ORDERED.

16 Dated: June 8, 2015

17 */s/ Michael J. Seng*
18 UNITED STATES MAGISTRATE JUDGE
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