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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MIGUEL DIAZ,  
  
  Plaintiff,  
  
  v.  
  
STU SHERMAN, et al.,  
  
  Defendants.

CASE NO. 1:13-cv-1627-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. 16)**  
  
**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 January 30, 2014, Plaintiff’s complaint was dismissed for failure to state a claim, but he was given leave to file a first amended complaint. (ECF No. 10.) Plaintiff sought and was granted two extensions of time to file an amended complaint. (ECF Nos. 13, 14, 15, 16.) The second extension was granted and served on May 29, 2014, and Plaintiff had thirty days from that date to file his amended complaint.

The deadline has passed without Plaintiff either filing an amended pleading 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

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, failure to obey a court order, or failure  
7 to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)  
8 (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-  
9 61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of a  
10 complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure  
11 to comply with local rule requiring pro se plaintiffs to keep court apprised of address);  
12 Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to  
13 comply with a court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986)  
14 (dismissal for lack of prosecution and failure to comply with local rules).

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

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

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 Plaintiff has not responded to the Court's order.

6 Accordingly, it is HEREBY ORDERED THAT:

- 7 1. Within fourteen (14) days of service of this Order, Plaintiff shall either show  
8 cause as to why this action should not be dismissed with prejudice for  
9 failure to comply with the Court's order (ECF No. 16) and failure to  
10 prosecute, or file an amended complaint, and
- 11 2. If Plaintiff fails to show cause or file an amended complaint, the  
12 undersigned shall recommend this action be dismissed, with prejudice,  
13 subject to the "three strikes" provision set forth in 28 U.S.C. § 1915(g).  
14 Silva v. Di Vittorio, 658 F.3d 1090 (9th Cir. 2011).

15 IT IS SO ORDERED.

16 Dated: July 9, 2014

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