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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

LAKEITH LEROY MCCOY,

Plaintiff,

v.

J. RAMIREZ, et al.,

Defendants.

CASE NO. 1: 13-cv-01808-MJS (PC)

ORDER DENYING MOTION FOR COURT  
ORDER (ECF No. 22)

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. 21)

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. (ECF Nos. 1 & 5.) Plaintiff has consented to Magistrate Judge jurisdiction. (ECF No. 6.)

**I. MOTION FOR COURT ORDER**

On April 28, 2015, Plaintiff filed a motion for a court order to direct the prison where he is currently housed, California Correctional Institution at Tehachapi, to accept, address, and return his grievances. (ECF No. 22.) The prison is not a party to the

1 instant action, and the Court has no power to issue an order against individuals who are  
2 not parties to a suit pending before it. See *Zenith Radio Corp. v. Hazeltine Research,*  
3 *Inc.*, 395 U.S. 100, 112 (1969); *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1985).  
4 Plaintiff's motion is denied.

## 5 **II. ORDER TO SHOW CAUSE**

6 On January 13, 2015, the Court screened Plaintiff's First Amended Complaint and  
7 entered an order requiring him to either file an amended complaint or notify the Court of  
8 his willingness to proceed on his cognizable claim only. (ECF No. 12.) Plaintiff  
9 requested two extensions of time, which the Court granted. (ECF Nos. 18 & 21.) The  
10 April 28, 2015 deadline has now passed without Plaintiff either filing an amended  
11 pleading, notifying the Court of his willingness to proceed on his cognizable claim alone,  
12 or seeking an additional extension of time.

13 Local Rule 110 provides that "[f]ailure of counsel or of a party to comply with  
14 these Rules or with any order of the Court may be grounds for imposition by the Court of  
15 any and all sanctions . . . within the inherent power of the Court." "District courts have  
16 inherent power to control their dockets [and] . . . [i]n the exercise of that power, they may  
17 impose sanctions including, where appropriate, default or dismissal." *Thompson v.*  
18 *Housing Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with  
19 prejudice, based on a party's failure to prosecute, failure to obey a court order, or failure  
20 to comply with local rules. See, e.g., *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995)  
21 (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-  
22 63 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of a  
23 complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure  
24 to comply with local rule requiring pro se plaintiffs to keep court apprised of address);  
25 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to  
26 comply with a court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424-25 (9th Cir.  
27 1986) (dismissal for lack of prosecution and failure to comply with local rules).  
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1 In determining whether to dismiss an action for lack of prosecution, failure to obey  
2 a court order, or failure to comply with local rules, the Court must consider several  
3 factors: “(1) the public’s interest in expeditious resolution of litigation; (2) the [C]ourt’s  
4 need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public  
5 policy favoring disposition of cases on their merits and (5) the availability of less drastic  
6 alternatives.” *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423.

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

18 Accordingly, it is HEREBY ORDERED THAT:

- 19 1. Plaintiff’s motion for a court order is (ECF No. 22.) DENIED;
- 20 2. Within fourteen (14) days of service of this Order, Plaintiff shall either show  
21 cause as to why this action should not be dismissed with prejudice for  
22 failure to comply with the Court’s order (ECF No. 21) and failure to  
23 prosecute, or file an amended complaint or notify the Court of his  
24 willingness to proceed on his cognizable claim alone; and
- 25 3. If Plaintiff fails to show cause or file an amended complaint or notify the  
26 Court of his willingness to proceed on his cognizable claim alone, the  
27 undersigned shall dismiss this action, with prejudice, subject to the “three  
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strikes” provision set forth in 28 U.S.C. § 1915(g). *Silva v. Di Vittorio*, 658 F.3d 1090 (9th Cir. 2011).

IT IS SO ORDERED.

Dated: May 11, 2015

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