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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 JOSHUA LEE BYERLEY,

12 Plaintiff,

13 v.

14 KIM HOLLAND, et al.,

15 Defendants.
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CASE NO. 1:14-cv-00489-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. 6)

FOURTEEN (14) DAY DEADLINE

18 Plaintiff Joshua Lee Byerley is a state prisoner proceeding *pro se* and *in forma*
19 *pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. On January 12, 2015,
20 Plaintiff's complaint was dismissed for failure to state a claim, but he was given leave to
21 file a first amended complaint within thirty days. (ECF No. 6.) The thirty day deadline
22 has passed without Plaintiff either filing an amended pleading or seeking an extension of
23 time to do so.

24 Local Rule 110 provides that "[f]ailure of counsel or of a party to comply with
25 these Rules or with any order of the Court may be grounds for imposition by the Court of
26 any and all sanctions . . . within the inherent power of the Court." "District courts have
27 inherent power to control their dockets [and] . . . [i]n the exercise of that power, they may
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1 impose sanctions including, where appropriate, default or dismissal.” *Thompson v.*
2 *Housing Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with
3 prejudice, based on a party’s failure to prosecute, failure to obey a court order, or failure
4 to comply with local rules. See, e.g., *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995)
5 (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-
6 63 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of a
7 complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure
8 to comply with local rule requiring pro se plaintiffs to keep court apprised of address);
9 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to
10 comply with a court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424-25 (9th Cir.
11 1986) (dismissal for lack of prosecution and failure to comply with local rules).

12 In determining whether to dismiss an action for lack of prosecution, failure to obey
13 a court order, or failure to comply with local rules, the Court must consider several
14 factors: “(1) the public’s interest in expeditious resolution of litigation; (2) the [C]ourt’s
15 need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
16 policy favoring disposition of cases on their merits and (5) the availability of less drastic
17 alternatives.” *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423.

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

1 Accordingly, it is HEREBY ORDERED THAT:

- 2 1. Within fourteen (14) days of service of this Order, Plaintiff shall either show
3 cause as to why this action should not be dismissed with prejudice for
4 failure to comply with the Court's order (ECF No. 6.) and failure to
5 prosecute, or file an amended complaint, and
6 2. If Plaintiff fails to show cause or file an amended complaint, the
7 undersigned shall dismiss this action, with prejudice, subject to the "three
8 strikes" provision set forth in 28 U.S.C. § 1915(g). *Silva v. Di Vittorio*, 658
9 F.3d 1090 (9th Cir. 2011).

10 IT IS SO ORDERED.
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12 Dated: March 2, 2015

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