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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

BARTON R. SHAFER,

Plaintiff,

v.

AVENAL STATE PRISON,

Defendant(s).

Case No. 1:14-cv-00846-MJS (PC)

**ORDER TO SHOW CAUSE WHY ACTION  
SHOULD NOT BE DISMISSED WITH  
PREJUDICE FOR FAILURE TO STATE A  
CLAIM AND FAILURE TO PROSECUTE  
(ECF Nos. 15 & 17)**

**FOURTEEN (14) DAY DEADLINE**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. The Complaint was dismissed for failure to state a claim. Plaintiff was given leave to file an amended pleading by not later than August 18, 2014. Plaintiff requested and was granted an extension of the deadline to September 3, 2014.

The September 3rd deadline 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 Rules or with any order of the Court may be grounds for imposition by the Court of any and

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

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

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

1 sanction while preserving scarce Court resources. Plaintiff has not paid the filing fee for this  
2 action and is likely unable to pay, making monetary sanctions of little use.

3 Accordingly, it is HEREBY ORDERED THAT:

- 4 1. Within fourteen (14) days of service of this Order, Plaintiff shall either show  
5 cause as to why this action should not be dismissed with prejudice for failure  
6 to comply with the Court's orders (ECF Nos. 15 & 17) and failure to  
7 prosecute, or file an amended complaint, and
- 8 2. If Plaintiff fails to show cause or file an amended complaint, the action will be  
9 dismissed, with prejudice, for failure to state a claim and failure to prosecute,  
10 subject to the "three strikes" provision set forth in 28 U.S.C. § 1915(g). *Silva*  
11 *v. Di Vittorio*, 658 F.3d 1090 (9th Cir. 2011).

12 IT IS SO ORDERED.

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14 Dated: September 11, 2014

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