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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BENNY C. JOHNSTON, JR.,
Plaintiff,
v.
COOLEY, et al.,
Defendants.

CASE NO. 1:14-cv-00979-MJS (PC)
**ORDER DISMISSING ACTION WITH
PREJUDICE FOR FAILURE TO STATE A
CLAIM, FAILURE TO OBEY A COURT
ORDER, AND FAILURE TO PROSECUTE
(ECF No. 17)**
**CLERK TO TERMINATE PENDING
MOTIONS AND CLOSE CASE**

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. Plaintiff has consented to Magistrate Judge jurisdiction. No other parties have appeared in the action.

On October 31, 2014, Plaintiff's first amended complaint was dismissed for failure to state a claim, but he was given leave to amend. (ECF No. 12.) Plaintiff sought and received two extensions of time, affording him more than seven months to file an amended pleading. (ECF Nos. 14, 16.) Plaintiff did not file an amended pleading in the time provided and, on June 16, 2015, the Court ordered Plaintiff to show cause why the action should not be dismissed, with prejudice, for failure to state a claim, failure to prosecute, and failure to obey a court order. (ECF No. 17.) Plaintiff did not respond to

1 the order to show cause.

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 is likely
5 unable to pay monetary sanctions, making such sanctions of little use.

6 Based on the foregoing, it is HEREBY ORDERED that:

- 7 1. The action is dismissed, with prejudice, for failure to state a claim, failure
8 to obey a court order, and failure to prosecute;
- 9 2. Dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g); and
- 10 3. The Clerk’s Office is directed to terminate any and all pending motions and
11 to close the case.

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13 IT IS SO ORDERED.

14 Dated: July 13, 2015

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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