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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SHAWN ANDERSON,
Plaintiff,
v.
CHRIS KR PAN, et al.,
Defendants.

CASE NO. 1:14-cv-1380-AWI-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. 10)
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 September 16, 2014, Plaintiff's complaint was dismissed for failure to state a claim, but he was given leave to amend. (ECF No. 5.) Plaintiff filed a first amended complaint on October 3, 2014. (ECF No. 9.) On October 27, 2014, the Court struck Plaintiff's first amended complaint on the ground it was unsigned. (ECF No. 10.) The Court also concluded that the first amended complaint failed to state a cognizable claim. (Id.) Plaintiff was ordered to file an amended, signed complaint within thirty days. (Id.) The thirty day deadline has passed without Plaintiff either filing an amended pleading or seeking an extension of time to do so.

1 Local Rule 110 provides that “failure of counsel or of a party to comply with these
2 Rules or with any order of the Court may be grounds for imposition by the Court of any
3 and all sanctions . . . within the inherent power of the Court.” District courts have the
4 inherent power to control their dockets and “in the exercise of that power, they may
5 impose sanctions including, where appropriate . . . dismissal of a case.” Thompson v.
6 Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with
7 prejudice, based on a party’s failure to prosecute, failure to obey a court order, or failure
8 to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)
9 (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-
10 61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of a
11 complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure
12 to comply with local rule requiring pro se plaintiffs to keep court apprised of address);
13 Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to
14 comply with a court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986)
15 (dismissal for lack of prosecution and failure to comply with local rules).

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

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

1 factors in favor of dismissal discussed herein. Finally, as for the availability of lesser
2 sanctions, at this stage in the proceedings there is little available which would constitute
3 a satisfactory lesser sanction while preserving scarce Court resources. Plaintiff has not
4 paid the filing fee for this action and is likely unable to pay, making monetary sanctions
5 of little use.

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. 10) 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 will recommend that the 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, 1098 (9th Cir. 2011).

15 IT IS SO ORDERED.

16 Dated: December 10, 2014

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