

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

## MARVIN JENKINS.

Plaintiff.

v.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION

Defendant.

CASE NO. 1:14-cv-1795-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. 1)

## **FOURTEEN (14) DAY DEADLINE**

Plaintiff is a state prisoner proceeding pro se in this civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiff initially was a plaintiff in Webb v. California Department of Corrections and Rehabilitation, No. 1:14-cv-01528-MJS (PC). On November 17, 2014, the Court severed Plaintiff's claims and ordered the Clerk's Office to open the instant action for Plaintiff's claims. Plaintiff was ordered to submit his own complaint within thirty days, and an application to proceed in forma pauperis or the applicable filing fee within forty-five days. (ECF No. 1.) These deadlines passed without Plaintiff filing his pleading or an application to proceed in forma pauperis, paying the applicable filing fee, 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

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

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

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

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

5 Accordingly, it is HEREBY ORDERED THAT:

6 1. Within fourteen (14) days of service of this Order, Plaintiff shall either show  
7 cause as to why this action should not be dismissed with prejudice for  
8 failure to comply with the Court's orders (ECF No. 1), or submit his  
9 complaint and an application to proceed in forma pauperis or the applicable  
10 filing fee in full, and

11 2. If Plaintiff fails to show cause, file his complaint, file an application to  
12 proceed in forma pauperis, or pay the applicable filing fee, the undersigned  
13 will recommend that this action be dismissed, without prejudice for failure  
14 to obey a court order and failure to prosecute.

15 IT IS SO ORDERED.

16 Dated: January 12, 2015

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

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