

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARVIN JENKINS.

Plaintiff.

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION,

Defendant.

CASE NO. 1:14-cv-01795-LJO-MJS (PC)

FINDINGS AND RECOMMENDATION TO DISMISS ACTION WITHOUT PREJUDICE FOR FAILURE TO OBEY A COURT ORDER, FAILURE TO PROSECUTE, FAILURE TO FILE APPLICATION TO PROCEED IN FORMA PAUPERIS, AND FAILURE TO PAY FILING FEE

(ECF Nos. 1 & 4)

FOURTEEN (14) DAY OBJECTION DEADLINE

Plaintiff is a state prisoner proceeding pro se in a civil rights action brought pursuant to 42 U.S.C. § 1983. He 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 those 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.

1 On January 13, 2015, the Court ordered Plaintiff to show cause, within fourteen
2 days, why the action should not be dismissed for failure to obey a court order and failure
3 to prosecute. (ECF No. 4.) Plaintiff did not respond to the order to show cause, and the
4 time for doing so has passed.

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

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

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

10 Plaintiff has failed to comply with the Court's order that he file his own pleading,
11 and file an application to proceed in forma pauperis or pay the applicable filing fee. (ECF
12 No. 1.) Accordingly, it is HEREBY RECOMMENDED THAT this action be DISMISSED
13 without prejudice.

14 These findings and recommendation are submitted to the United States District
15 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
16 fourteen (14) days after being served with these Findings and Recommendations, any
17 party may file written objections with the Court and serve a copy on all parties. Such a
18 document should be captioned "Objections to Magistrate Judge's Findings and
19 Recommendations." Any reply to the objections shall be served and filed within fourteen
20 (14) days after service of the objections. The parties are advised that failure to file
21 objections within the specified time may result in the waiver of rights on appeal.
22 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (9th Cir. 2014) (citing Baxter v.
23 Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

24 IT IS SO ORDERED.
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26 Dated: February 3, 2015
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28 /s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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