

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

HOLLIE JONES,  
  
                        Plaintiff,  
  
        v.  
  
Y. MAGALLON, et al.,  
  
                        Defendants.

CASE NO. 1:15-cv-01897-DAD-MJS (PC)  
  
**ORDER TO SHOW CAUSE WHY ACTION  
SHOULD NOT BE DISMISSED FOR  
FAILURE TO OBEY A COURT ORDER  
AND FAILURE TO PROSECUTE**  
  
**(ECF No. 22)**  
  
**FOURTEEN (14) DAY DEADLINE**

Plaintiff is a prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983.

On January 30, 2017, the Court screened Plaintiff's second amended complaint and found it stated cognizable claims against Defendant Magallon for excessive force and retaliation. (ECF No. 22.) The Court dismissed Plaintiff's remaining claims and directed Plaintiff to file either a third amended complaint or a notice of willingness to proceed only on his cognizable claims within thirty days. (Id.) To date, Plaintiff has not filed an amended complaint, a notice of willingness to proceed, or a request for additional time.

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

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

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

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

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

4 Accordingly, it is HEREBY ORDERED THAT:

- 5 1. Within fourteen (14) days of service of this Order, Plaintiff shall file either a  
6 third amended complaint or notice of willingness to proceed, or shall show  
7 cause as to why this action should not be dismissed with prejudice for  
8 failure to prosecute and failure to comply with the Court's order (ECF No.  
9 22); and
- 10 2. If Plaintiff fails to show cause or file an amended complaint or notice of  
11 willingness to proceed, the undersigned will recommend that the action be  
12 dismissed, with prejudice.

13 IT IS SO ORDERED.

14 Dated: April 14, 2017

15 */s/ Michael J. Seng*  
16 UNITED STATES MAGISTRATE JUDGE  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28