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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID LESLIE MANNING, JR.,
Plaintiff,
v.
M. STAINER, et al.,
Defendants.

CASE NO. 1:16-cv-00551-MJS (PC)

**ORDER TO SHOW CAUSE WHY ACTION
SHOULD NOT BE DISMISSED FOR
FAILURE TO PAY FILING FEE OR FILE
APPLICATION TO PROCEED IN FORMA
PAUPERIS, FAILURE TO OBEY COURT
ORDER, AND FAILURE TO PROSECUTE**

(ECF No. 11)

FOURTEEN (14) DAY DEADLINE

Plaintiff is a state hospital detainee proceeding pro se in a civil rights action filed pursuant to 42 U.S.C. § 1983.

On March 7, 2016, Plaintiff filed an application to proceed in forma pauperis by a prisoner. (ECF No. 8.) On April 25, 2016, the Court ordered Plaintiff to file a non-prisoner application to proceed in forma pauperis or pay the \$400 filing fee within thirty days. (ECF No. 11.) Plaintiff has not done so.

Additionally, on May 2, 2016, the Court screened Plaintiff's complaint and dismissed it with leave to amend on the ground his claims were barred by Heck v. Humphrey, 512 U.S. 477, 489 (1994). Plaintiff failed to file an amended complaint or

1 notice of voluntary dismissal as ordered by the Court and the time for doing so has
2 passed.

3 A civil action may not proceed absent the submission of either the filing fee or a
4 completed application to proceed in forma pauperis. 28 U.S.C. §§ 1914, 1915. Based on
5 Plaintiff's failure to comply with the Court's order, dismissal of this action is appropriate.
6 See In re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1226
7 (9th Cir. 2006); Local Rule 110.

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

24 In determining whether to dismiss an action for lack of prosecution, failure to obey
25 a court order, or failure to comply with local rules, the Court must consider several
26 factors: (1) the public's interest in expeditious resolution of litigation, (2) the Court's need
27 to manage its docket, (3) the risk of prejudice to the defendants, (4) the public policy
28 favoring disposition of cases on their merits, and (5) the availability of less drastic

1 alternatives. Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone, 833
2 F.2d at 130; Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

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

14 Accordingly, it is HEREBY ORDERED THAT:

- 15 1. Within fourteen (14) days of service of this Order, Plaintiff shall
- 16 a. file an application to proceed in forma pauperis for a non-prisoner, or
- 17 pay the \$400 filing fee in full; and
- 18 b. file a notice of voluntary dismissal or a first amended complaint; or
- 19 c. show cause as to why this action should not be dismissed without
- 20 prejudice;
- 21 2. If Plaintiff fails to comply with this order, the undersigned will dismiss the
- 22 action without prejudice for failure to pay the filing fee or file a completed
- 23 application to proceed in forma pauperis, failure to obey a court order, and
- 24 failure to prosecute.

25 IT IS SO ORDERED.

26 Dated: June 10, 2016

27 /s/ Michael J. Seng
28 UNITED STATES MAGISTRATE JUDGE