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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID SEGOVIA,
Plaintiff,
v.
PETERS,
Defendant.

CASE NO. 1:17-cv-00053-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. 15)

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. Plaintiff initiated this action on October 10, 2014 in the Sacramento Division of the Eastern District of California. (ECF No. 1.) On January 12, 2017, the Court screened Plaintiff's complaint and determined that it states a cognizable claim against Defendant Peters, but no other claims. (ECF No. 13.) Because the only cognizable claims arose at Kern Valley State Prison, the action was transferred to the Fresno Division of the Eastern District of California. (Id.)

On January 17, 2017, the undersigned ordered Plaintiff to return service documents within thirty days to initiate service of process on Defendant Peters. (ECF No. 15.) Plaintiff was warned that failure to comply would result in dismissal of the action.

1 The thirty day deadline passed without Plaintiff submitting service documents or
2 requesting an extension of time in which to do so.

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

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

25 In the instant case, the public’s interest in expeditiously resolving this litigation
26 and the Court’s interest in managing its docket weigh in favor of dismissal. The third
27 factor, risk of prejudice to Defendants, also weighs in favor of dismissal, since a
28 presumption of injury arises from the occurrence of unreasonable delay in prosecuting

1 this action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor --
2 public policy favoring disposition of cases on their merits -- is greatly outweighed by the
3 factors in favor of dismissal discussed herein. Finally, as for the availability of lesser
4 sanctions, at this stage in the proceedings there is little available which would constitute
5 a satisfactory lesser sanction while preserving scarce Court resources. Plaintiff has not
6 paid the filing fee for this action and is likely unable to pay, making monetary sanctions
7 of little use.

8 Accordingly, it is HEREBY ORDERED THAT:

- 9 1. Within fourteen (14) days of service of this Order, Plaintiff shall either
10 submit service documents as ordered or show cause as to why this action
11 should not be dismissed with prejudice for failure to prosecute and failure
12 to comply with the Court's order (ECF No. 15); and
- 13 2. If Plaintiff fails to show cause or submit service documents, the
14 undersigned will recommend that the action be dismissed, with prejudice.

15 IT IS SO ORDERED.

16 Dated: February 28, 2017

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