

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAMES ALFRED CUNHA,

Plaintiff,

v.

CALIFORNIA FORENSIC MEDICAL
GROUP, et al.,

Defendants.

CASE NO. 1:17-cv-00094-DAD-MJS (PC)

**ORDER TO SHOW CAUSE WHY ACTION
SHOULD NOT BE DISMISSED WITH
PREJUDICE FOR FAILURE TO STATE A
CLAIM, FAILURE TO OBEY A COURT
ORDER, AND FAILURE TO PROSECUTE**

(ECF No. 16)

FOURTEEN (14) DAY DEADLINE

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

On May 16, 2017, the Court dismissed Plaintiff's first amended complaint for failure to state a claim but gave thirty days leave to amend. (ECF No. 13.) On June 9, 2017, Plaintiff filed a "Motion to File an Appeal." (ECF No. 14.) Unsure of the purpose of that motion, the Court on June 19, 2017, directed Plaintiff to file within fourteen days an amended complaint, a request for reconsideration, a notice of appeal, or a statement of intent to stand on his first amended complaint. (ECF No. 16.) To date, Plaintiff has filed nothing.

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, default or dismissal.” Thompson v.
5 Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with
6 prejudice, based on a party’s failure to prosecute, failure to obey a court order, or failure
7 to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)
8 (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-
9 61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of a
10 complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure
11 to comply with local rule requiring pro se plaintiffs to keep court apprised of address);
12 Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to
13 comply 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 file either
7 an amended complaint or otherwise respond to the Court's order, or shall
8 show cause as to why this action should not be dismissed with prejudice
9 for failure to state a claim, failure to prosecute, and failure to comply with
10 the Court's order (ECF No.16); and
- 11 2. If Plaintiff fails to show cause or otherwise respond, the undersigned will
12 recommend that the action be dismissed, with prejudice.

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14 IT IS SO ORDERED.

15 Dated: July 14, 2017

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