

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

PATRICK JACKSON.

Plaintiff.

1

L. SMALLEY, et al..

## Defendants.

CASE No. 1:17-cv-00110-MJS (PC)

**ORDER DISMISSING ACTION, WITH  
PREJUDICE, FOR FAILURE TO STATE A  
CLAIM, FAILURE TO OBEY A COURT  
ORDER, AND FAILURE TO PROSECUTE**

## CLERK TO CLOSE CASE

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. He has consented to Magistrate Judge jurisdiction. (ECF No. 13.) No other parties have appeared in the action.

On February 13, 2017, the Court dismissed Plaintiff's complaint (ECF No. 1) for failure to state a claim, but granted him thirty days to amend (ECF No. 9). Plaintiff then twice requested, and twice was given, extensions of time to file an amended complaint. However, the Court's May 5, 2017, extension was noted to be the last Plaintiff would be given "**absent a showing of good cause based on presently unforeseeable circumstances.**" (ECF No. 16.) (emphasis in original). The thirty day deadline provided

1 there passed without Plaintiff filing an amended pleading or otherwise responding to the  
2 Court.

3 Accordingly, on June 20, 2017, the Court ordered Plaintiff to show cause why his  
4 case should not be dismissed, with prejudice. (ECF No. 18.) The Court gave Plaintiff  
5 fourteen days within which to respond to the order to show cause. Plaintiff failed to do  
6 so, but on July 10, 2017, did move for an extension of time to respond to the Court's  
7 order to show cause. (ECF No. 19.) The Court denied that request on July 26, 2017,  
8 stating:

9                     Despite being warned that any request for more time would  
10                    have to be based on then-unforeseen circumstances,  
11                    Plaintiff's July 10 motion presents the same reasons  
12                    previously given. He does, however, add a claim that he  
13                    needs more time because he has sustained "serious injuries"  
14                    and his property has been "misplaced." Plaintiff fails to  
15                    specify the nature of the property misplaced, how it was  
16                    misplaced, when it was misplaced, how long it was  
17                    misplaced, or how its misplacement affected his ability to  
18                    respond. Similarly, he does not describe the injury, when it  
19                    occurred, or how and for how long it affected his ability to  
20                    respond to the Court's order. Considering the Court's earlier  
21                    extensions of time and its warning that a further extension  
22                    request would have to be based upon a showing of good  
23                    cause, Plaintiff's bare assertion of "serious injury" and  
24                    misplaced property cannot justify granting yet another  
25                    extension of time. Plaintiff has had five months to amend his  
26                    pleading and he appears to have disregarded the import of  
27                    the warnings given. There is no good cause for further  
28                    extension of time to respond to the order to show cause or to  
                          amend the complaint.

22 (ECF No. 20.)

23                    Local Rule 110 provides that "failure of counsel or of a party to comply with these  
24                    Rules or with any order of the Court may be grounds for imposition by the Court of any  
25                    and all sanctions . . . within the inherent power of the Court." District courts have the  
26                    inherent power to control their dockets and, "in the exercise of that power, they may  
27                    impose sanctions including, where appropriate, default or dismissal." Thompson v.  
28 Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with

1 prejudice, based on a party's failure to prosecute, failure to obey a court order, or failure  
2 to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)  
3 (dismissing for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-  
4 61 (9th Cir. 1992) (dismissing for failure to comply with an order requiring amendment of  
5 a complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissing for  
6 failure to comply with local rule requiring pro se plaintiffs to keep court apprised of  
7 address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissing  
8 for failure to comply with a court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th  
9 Cir. 1986) (dismissing for lack of prosecution and failure to comply with local rules).

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

17 In the instant case, the public's interest in expeditiously resolving this litigation  
18 and the Court's interest in managing its docket weigh in favor of dismissal. The third  
19 factor, risk of prejudice to Defendants, also weighs in favor of dismissal, since a  
20 presumption of injury arises from the occurrence of unreasonable delay in prosecuting  
21 this action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor –  
22 public policy favoring disposition of cases on their merits – is greatly outweighed by the  
23 factors in favor of dismissal discussed herein. With respect to the availability of lesser  
24 sanctions, at this stage in the proceedings there is little available which would constitute  
25 a satisfactory lesser sanction while preserving scarce Court resources. Plaintiff has not  
26 paid the filing fee for this action and is likely unable to pay, making monetary sanctions  
27 of little use. Finally, the order to show cause warned Plaintiff that his failure to comply  
28 may result in dismissal, with prejudice. (ECF No. 18.) Thus, Plaintiff was on notice that

1 his failure to communicate with the Court could result in dismissal of his complaint.

2 Based on the foregoing, it is HEREBY ORDERED THAT:

3 1. The action is DISMISSED, with prejudice, for failure to state a claim, failure  
4 to comply with the Court's orders (ECF Nos. 9, 18), and failure to  
5 prosecute; and

6 2. The Clerk of Court is directed to terminate all pending motions and close  
7 the case.

8 IT IS SO ORDERED.

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10 Dated: August 2, 2017

/s/ Michael J. Seng  
11 UNITED STATES MAGISTRATE JUDGE

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