

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

RUBEN FLOWERS,  
Plaintiff,  
v.  
C. CRYER, et al.,  
Defendants.

CASE No. 1:17-cv-00263-AWI-MJS (PC)  
**FINDINGS AND RECOMMENDATION TO  
DISMISS ACTION FOR FAILURE TO  
OBEY COURT ORDER AND FAILURE TO  
PROSECUTE**  
(ECF No. 18)  
**FOURTEEN (14) DAY OBJECTION  
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.

On June 13, 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 July 12, 2017, Plaintiff requested additional time to file a second amended complaint. (ECF No. 14.) On July 13, 2017, the Court granted this motion and provided Plaintiff an additional ninety days to file a second amended complaint. (ECF No.15.) The ninety day deadline expired without Plaintiff filing an amended pleading or seeking an additional extension of

1 time. On October 24, 2017, the Court ordered Plaintiff to show cause why the action  
2 should not be dismissed based on Plaintiff's failure to file an amended complaint as  
3 ordered by the Court. (ECF No. 16.)

4 On November 1, 2017, Plaintiff filed a response requesting dismissal of the action  
5 without prejudice and with leave to amend within 120 days. (ECF No. 17.) The Court was  
6 unclear as to whether Plaintiff intended a voluntary dismissal or a de facto request for  
7 additional time to amend. Accordingly, on November 7, 2017, the Court ordered Plaintiff  
8 to either file a notice of voluntary dismissal within twenty-one days, or affirmatively  
9 indicate his intent to prosecute this action by filing an amended complaint within thirty  
10 days. (ECF No. 18.) Plaintiff has filed no response and the time for doing so has passed.

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

26 In determining whether to dismiss an action for lack of prosecution, failure to obey  
27 a court order, or failure to comply with local rules, the Court must consider several  
28

1 factors: (1) the public's interest in expeditious resolution of litigation, (2) the Court's  
2 need  
3 to manage its docket, (3) the risk of prejudice to the defendants, (4) the public policy  
4 favoring disposition of cases on their merits, and (5) the availability of less drastic  
5 alternatives. Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone, 833  
6 F.2d at 130; Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

7 Here, Plaintiff has failed to respond to several Court orders, most recently that he  
8 file an amended complaint or a notice of voluntary dismissal. (ECF No. 18.) Additionally,  
9 Plaintiff has been given two time extensions (ECF Nos. 15, 18) and has failed to file an  
10 amended complaint that states a claim. Therefore, in the instant case, the public's  
11 interest in expeditiously resolving this litigation and the Court's interest in managing its  
12 docket weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also  
13 weighs in favor of dismissal, since a presumption of injury arises from the occurrence of  
14 unreasonable delay in prosecuting this action. Anderson v. Air West, 542 F.2d 522, 524  
15 (9th Cir. 1976). The fourth factor – public policy favoring disposition of cases on their  
16 merits – is greatly outweighed by the factors in favor of dismissal discussed herein.  
17 Finally, as for the availability of lesser sanctions, at this stage in the proceedings there is  
18 little available which would constitute a satisfactory lesser sanction while preserving  
19 scarce Court resources. Plaintiff has not paid the filing fee for this action and is likely  
20 unable to pay, making monetary sanctions of little use.

21 Based on the foregoing, it is HEREBY RECOMMENDED that the action be  
22 dismissed, without prejudice, for failure to obey a court order and failure to prosecute.

23 These findings and recommendation are submitted to the United States District  
24 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within  
25 fourteen days after being served with the findings and recommendation, any party may  
26 file written objections with the Court and serve a copy on all parties. Such a document  
27 should be captioned "Objections to Magistrate Judge's Findings and Recommendation."  
28

1 Any reply to the objections shall be served and filed within fourteen days after service of  
2 the objections. The parties are advised that failure to file objections within the specified  
3 time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834,  
4 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

5  
6 IT IS SO ORDERED.

7 Dated: December 26, 2017 *1st Michael J. Seng*  
8 UNITED STATES MAGISTRATE JUDGE  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28