

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DEMEKA EUGENE MOORE,

Plaintiff.

v.

JOEL MARTINEZ,

Defendant.

CASE NO. 1:17-cv-01249-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. 14)

Plaintiff is a former prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. On February 26, 2018, the Court screened Plaintiff's complaint, concluded it stated no cognizable claims, and ordered Plaintiff to either file an amended complaint or a notice of voluntary dismissal, or to notify the Court that he wished to stand on his complaint as written. (ECF No. 11.) The thirty day response deadline has passed without Plaintiff filing an amended pleading; notice of voluntary dismissal; notice of electing to stand on his complaint; or seeking an extension of time to do so.

Local Rule 110 provides that “failure of counsel or of a party to comply with these Rules or with any order of the Court may be grounds for imposition by the Court of any

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

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

21 In the instant case, the public's interest in expeditiously resolving this litigation
22 and the Court's interest in managing its docket weigh in favor of dismissal. The third
23 factor, risk of prejudice to Defendant, also weighs in favor of dismissal, since a
24 presumption of injury arises from the occurrence of unreasonable delay in prosecuting
25 this action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor --
26 public policy favoring disposition of cases on their merits -- is greatly outweighed by the
27 factors in favor of dismissal discussed herein. Finally, as for the availability of lesser
28 sanctions, at this stage in the proceedings there is little available which would constitute

1 a satisfactory lesser sanction while preserving scarce Court resources. Plaintiff has not
2 paid the filing fee for this action and is likely unable to pay, making monetary sanctions
3 of little use.

4 Accordingly, it is HEREBY ORDERED THAT:

- 5 1. Within fourteen (14) days of service of this Order, Plaintiff shall either:
- 6 a. File an amended complaint, notice of voluntary dismissal, notice of
7 electing to stand on his complaint, or
- 8 b. Show cause as to why this action should not be dismissed with
9 prejudice for failure to state a claim, failure to prosecute, and failure
10 to comply with the Court's order (ECF No. 11); and
- 11 2. If Plaintiff fails to comply with this order, the undersigned will recommend
12 that the action be dismissed, with prejudice.

13 IT IS SO ORDERED.

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15 Dated: April 6, 2018

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

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