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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ROGER KISKADEN,  
Plaintiff,  
v.  
CORCORAN PRISON, et al.,  
Defendants.

CASE NO. 1:17-cv-01547-MJS (PC)  
**ORDER FOR ASSIGNMENT OF  
DISTRICT JUDGE**  
**FINDINGS AND RECOMMENDATION TO  
DISMISS ACTION FOR FAILURE TO  
OBEY A COURT ORDER AND FAILURE  
TO PROSECUTE**  
**(ECF Nos. 16 and 20)**  
**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 January 3, 2018, Plaintiff's complaint was dismissed for failure to state a claim, but he was given leave to amend. (ECF No. 16.) Plaintiff did not file an amended pleading in the time provided and, on March 27, 2018, the Court ordered Plaintiff to show cause why the action should not be dismissed for failure to prosecute and failure to obey a court order. (ECF No. 20.) Plaintiff did not respond to the order to show cause.  
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 Defendants, 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 is  
2 proceeding in forma pauperis and is likely unable to pay monetary sanctions, making  
3 such sanctions of little use.

4 Based on the foregoing, it is HEREBY RECOMMENDED that the action be  
5 dismissed for failure to obey a court order and failure to prosecute. As Plaintiff has not  
6 consented to Magistrate Judge jurisdiction, the Clerk of Court is HEREBY DIRECTED to  
7 assign this matter to a United States District Judge for consideration of these findings  
8 and recommendations.

9 The findings and recommendation are submitted to the United States District  
10 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within  
11 fourteen (14) days after being served with the findings and recommendation, any party  
12 may file written objections with the Court and serve a copy on all parties. Such a  
13 document should be captioned "Objections to Magistrate Judge's Findings and  
14 Recommendation." Any reply to the objections shall be served and filed within fourteen  
15 (14) days after service of the objections. The parties are advised that failure to file  
16 objections within the specified time may result in the waiver of rights on appeal.  
17 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923  
18 F.2d 1391, 1394 (9th Cir. 1991)).

19  
20 IT IS SO ORDERED.

21 Dated: April 15, 2018

1st Michael J. Seng  
22 UNITED STATES MAGISTRATE JUDGE