

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
FOR THE EASTERN DISTRICT OF CALIFORNIA

JACKIE M. JOHNSON,
Plaintiff,
v.
CALIFORNIA MEDICAL FACILITY,
et al.,
Defendants.

No. 2:15-cv-1609 DB P

ORDER TO SHOW CAUSE

Plaintiff is a former state prisoner proceeding pro se and in forma pauperis pursuant to 42 U.S.C. § 1983. He has consented to the jurisdiction of a magistrate judge. On April 13, 2017, plaintiff’s first amended complaint was screened and found to state a single First Amendment retaliation claim against Correctional Officer Partee. All other claims and defendants were dismissed. Plaintiff was then granted thirty days to file either a second amended complaint or a notice of his willingness to proceed on the pleading as screened. To date, plaintiff has not filed an amended pleading or a notice.

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 and all sanctions . . . within the inherent power of the Court.” District courts have the inherent power to control their dockets and “in the exercise of that power, they may impose sanctions including,

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

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

18 In the instant case, the public’s interest in expeditiously resolving this litigation and the
19 Court’s interest in managing its docket weigh in favor of dismissal. The third factor, risk of
20 prejudice to Defendants, also weighs in favor of dismissal, since a presumption of injury arises
21 from the occurrence of unreasonable delay in prosecuting this action. Anderson v. Air West, 542
22 F.2d 522, 524 (9th Cir. 1976). The fourth factor -- public policy favoring disposition of cases on
23 their merits -- is greatly outweighed by the factors in favor of dismissal discussed herein. Finally,
24 as for the availability of lesser sanctions, at this stage in the proceedings there is little available
25 which would constitute a satisfactory lesser sanction while preserving scarce Court resources.
26 Plaintiff has not paid the filing fee for this action and is likely unable to pay, making monetary
27 sanctions of little use.

28 ///

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

Accordingly, IT IS HEREBY ORDERED that plaintiff shall show cause within fourteen days from the date of this order why this action should not be dismissed for failure to comply with a court order.

Dated: June 2, 2017



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

DLB7;
DB/Inbox/Routine/john1609.osc