

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

JAYMAR DODDS,

 Plaintiff,

 v.

E. LASCANO, et al.,

 Defendants.

Case No. 1:09-cv-00656-AWI-DLB PC

**FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF
ACTION FOR FAILURE TO OBEY
COURT ORDER**

ECF No. 57

**RESPONSE DUE WITHIN FOURTEEN
DAYS**

Plaintiff Jaymar Dodds (“Plaintiff”) is a California state prisoner proceeding pro se and in forma pauperis in this civil action pursuant to 42 U.S.C. § 1983. On September 6, 2012, Defendants filed a second motion to compel. ECF No. 53. Defendant had previously filed a motion to compel on May 23, 2012, contending that Plaintiff failed to respond to Defendants’ discovery requests. Plaintiff conceded that he did not timely respond, but requested additional time. The Court granted the extension of time. However, Plaintiff did not respond to Defendants’ requests for discovery. On October 26, 2012, the Court issued an order for Plaintiff to respond to Defendants’ second motion to compel. ECF No. 55. Plaintiff did not respond. On November 26, 2012, the Court issued an order to show cause why this action should not be dismissed for failure to obey a court order. ECF No. 57. Plaintiff was provided fourteen (14) days in which to respond. As of the date of these Findings and Recommendations, Plaintiff did not respond.

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

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

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

19 In the instant case, the Court finds that the public’s interest in expeditiously resolving this
20 litigation and the Court’s interest in managing the docket weigh in favor of dismissal. The third
21 factor, risk of prejudice to defendants, also weighs in favor of dismissal, since a presumption of
22 injury arises from the occurrence of unreasonable delay in prosecuting an action. *Anderson v. Air*
23 *West*, 542 F.2d 522, 524 (9th Cir. 1976). This action has been pending since April 13, 2009. The
24 fourth factor -- public policy favoring disposition of cases on their merits -- is greatly outweighed by
25 the factors in favor of dismissal discussed herein. Finally, a court’s warning to a party that his
26 failure to obey the court’s order will result in dismissal satisfies the “consideration of alternatives”
27 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424.
28 The Court’s order expressly stated: “If Plaintiff fails to show cause or otherwise timely respond, the

1 Court will dismiss this action for failure to obey a court order.” Thus, Plaintiff had adequate warning
2 that dismissal would result from his noncompliance with the Court’s order.

3 Accordingly, it is HEREBY RECOMMENDED that

4 1. This action be DISMISSED for failure to obey the Court’s November 21, 2012 Order;
5 and

6 2. The Clerk of the Court be directed to close this action.

7 These Findings and Recommendations will be submitted to the United States District Judge
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen (14) days**
9 after being served with these Findings and Recommendations, the parties may file written objections
10 with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and
11 Recommendations.” A party may respond to another party’s objections by filing a response within
12 **fourteen (14) days** after being served with a copy of that party’s objections. The parties are advised
13 that failure to file objections within the specified time may waive the right to appeal the District
14 Court’s order. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991).

15
16 IT IS SO ORDERED.

17
18 Dated: December 19, 2012

/s/ Dennis L. Beck
19 UNITED STATES MAGISTRATE JUDGE