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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE ROBLES,

Plaintiff,

1:09 CV 01054 AWI MJS (PC)

vs.

FINDINGS AND RECOMMENDATION  
THAT THIS ACTION BE DISMISSED FOR  
FAILURE TO PROSECUTE

DR. HUBBARD, et al.,

Defendants.

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Plaintiff is a state prisoner proceeding pro se and in forma pauperis in a civil rights action pursuant to 42 U.S.C. § 1983. This action was referred to this Court pursuant to 28 U.S.C. §(b)(1)(B).

On April 13, 2010, an order was entered directing plaintiff to either file an amended complaint or notify the Court of his willingness to proceed on claims found to be cognizable. Plaintiff was cautioned that his failure to comply would result in dismissal for failure to obey a court order. Plaintiff has not filed any response to that April 13, 2010 order.

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 sanctions . . . within the inherent power of the Court.” District courts have the inherent power

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

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

19 Here, the Court finds that the public’s interest in expeditiously resolving this litigation  
20 and the court’s interest in managing its docket weigh in favor of dismissal. The third factor, risk  
21 of prejudice to defendants, also weighs in favor of dismissal since a presumption of injury arises  
22 from the occurrence of unreasonable delay in prosecuting an action. Anderson v. Air West, 542  
23 F.2d 522, 524 (9<sup>th</sup> Cir. 1976). The fourth factor -- public policy favoring disposition of cases on  
24 their merits -- is outweighed by the above factors favoring dismissal. The court’s warning to a  
25 party that his failure to obey the court’s order will result in dismissal satisfies the “consideration  
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1 of alternatives” requirement. Ferdik v. Bonzelet, 963 F.2d at 1262; Malone, 833 at 132-33;  
2 Henderson, 779 F.2d at 1424.

3           Accordingly, the court HEREBY RECOMMENDS that this action be dismissed for  
4 plaintiff's failure to obey a court order.

5           These findings and recommendations are submitted to the United States District Judge  
6 assigned to the case pursuant to the provisions of Title 28 U.S.C. § 636 (b) (1). Within thirty  
7 days after being served with these findings and recommendations, any party may file written  
8 objections with the court and serve a copy on all parties. Such a document should be captioned  
9 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections  
10 shall be served and filed within ten days after service of the objections. The parties are advised  
11 that failure to file objections within the specified time may waive the right to appeal the District  
12 Court’s order. Martinez v. Y1st, 951 F.2d 1153 (9th Cir. 1991).

13  
14 IT IS SO ORDERED.

15 Dated: May 28, 2010

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