

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

ELENA ISUPOV,
Plaintiff,
v.
AMERICAN RELOCATION MOVING
SPECIALIST,
Defendant.

) 1:11-cv-00780 LJO GSA
)
) **FINDINGS AND RECOMMENDATIONS**
) **TO DISMISS THIS ACTION FOR**
) **PLAINTIFF’S FAILURE TO OBEY**
) **COURT ORDERS**

RELEVANT PROCEDURAL BACKGROUND

On May 13, 2011, Plaintiff Elena Isupov filed a breach of contract complaint with this Court. (Doc. 1.) That same date, Plaintiff filed an Application to Proceed in District Court Without Prepayment of Fees or Costs. (Doc. 2.)

On May 17, 2011, District Judge Lawrence J. O’Neill issued an Order Denying Application to Proceed In Forma Pauperis. Plaintiff was ordered to pay the filing fee of \$350.00 no later than June 15, 2011, to avoid dismissal of this action. (See Doc. 3.)

Thereafter, on May 23, 2011, the undersigned issued an Order Dismissing Complaint With Leave to Amend. More particularly, Plaintiff’s complaint was dismissed for a failure to

1 state a proper claim. Nevertheless, Plaintiff was granted thirty days' leave of court to file an
2 amended complaint, in order to cure the deficiencies identified by the Court. (See Doc. 4.)
3 Therefore, an amended complaint was to be filed no later than June 22, 2011.¹

4 As of today's date, Plaintiff has failed to file an amended complaint. Additionally,
5 Plaintiff has not paid the filing fee as previously ordered by Judge O'Neill.

6 DISCUSSION

7 Local Rule 110 provides that “[f]ailure of counsel or of a party to comply with these
8 Rules or with any order of the Court may be grounds for imposition by the Court of any and all
9 sanctions . . . within the inherent power of the Court.” District courts have the inherent power to
10 control their dockets and “in the exercise of that power, they may impose sanctions including,
11 where appropriate . . . dismissal of a case.” *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th
12 Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute
13 an action, failure to obey a court order, or failure to comply with local rules. *See, e.g. Ghazali v.*
14 *Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik*
15 *v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an
16 order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir.
17 1988) (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court
18 apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal
19 for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir.
20 1986) (dismissal for failure to lack of prosecution and failure to comply with local rules). In
21 determining whether to dismiss an action for lack of prosecution, failure to obey a court order, or
22 failure to comply with local rules, the Court must consider several factors: (1) the public's
23 interest in expeditious resolution of litigation; (2) the Court's need to manage its docket; (3) the
24 risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their
25 merits; and (5) the availability of less drastic alternatives. *Thompson*, 782 F.2d at 831;

26
27 ¹5/23/11 + 30 days = 6/22/11.

1 *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61;
2 *Ghazali*, 46 F.3d at 53.

3 In the instant case, the Court finds that the public’s interest in expeditiously resolving this
4 litigation and the Court’s interest in managing the docket weigh in favor of dismissal, as this case
5 has been pending since May 13, 2011, yet there is no indication that Plaintiff intends to prosecute
6 this action for she has ignored two separate court orders requiring either a response or action on
7 her part. *Henderson v. Duncan*, 779 F.2d at 1424. The third factor, risk of prejudice, also
8 weighs in favor of dismissal, since a presumption of injury arises from the occurrence of
9 unreasonable delay in prosecuting an action. *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir.
10 1976). The fourth factor - public policy favoring disposition of cases on their merits - is greatly
11 outweighed by the factors in favor of dismissal discussed herein. *Thompson*, 782 F.2d at 831;
12 *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61;
13 *Ghazali*, 46 F.3d at 53.

14 Finally, a court’s warning to a party that a failure to obey the Court’s order will result in
15 dismissal satisfies the “consideration of alternatives” requirement. *Ferdik v. Bonzelet*, 963 F.2d
16 at 1262; *Malone*, 833 at 132-33; *Henderson*, 779 F.2d at 1424. Here, Plaintiff received two such
17 warnings. First, Judge O’Neill’s May 17, 2011, order expressly provided that a “[f]ailure to
18 comply with this Order will result in the dismissal of this action.” (See Doc. 3 at 2.) Second, the
19 undersigned’s May 23, 2011, order specifically provided as follows: “**If Plaintiff fails to file a**
20 **first amended complaint, the Court will recommend that this action be dismissed for a**
21 **failure to follow a court order.**” (See Doc. 4 at 6, emphasis in original.) Thus, Plaintiff has had
22 adequate warning that dismissal would result from noncompliance with court orders.

23 RECOMMENDATION

24 Accordingly, the Court HEREBY RECOMMENDS that this action be DISMISSED for
25 Plaintiff’s failure to comply with court orders.

