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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

VANNA PHE,)	1:12cv0677 AWI DLB
)	
Plaintiff,)	FINDINGS AND RECOMMENDATIONS
)	REGARDING DISMISSAL OF ACTION
vs.)	
)	
WELLS FARGO BANK, N.A., et al.,)	
)	
Defendants.)	

Plaintiff Vanna Phe (“Plaintiff”), appearing pro se, filed the instant action on April 30, 2012.

On July 31, 2012, after Plaintiff failed to timely file a proof of service, the Court issued an order continuing the Scheduling Conference to October 10, 2012. Plaintiff was ordered to serve the complaint and file a proof of service by August 28, 2012.

Plaintiff failed to do so, and on September 28, 2012, the Court issued an Order to Show Cause why the action should not be dismissed for Plaintiff’s failure to serve the complaint and prosecute the action. Plaintiff was ordered to file a response, or properly executed return of service forms, within thirty (30) days. More than thirty (30) days have passed and Plaintiff has failed to respond to the Order to Show Cause of otherwise contact the Court.

For the reasons discussed below, the Court recommends that this action be dismissed for failure to follow a Court order and failure to prosecute.

DISCUSSION

1 Local Rule 110 provides that “failure of counsel or of a party to comply with these Local
2 Rules or with any order of the Court may be grounds for the imposition by the Court of any and
3 all sanctions . . . within the inherent power of the Court.” District courts have the inherent power
4 to control their dockets and “[i]n the exercise of that power they may impose sanctions including,
5 where appropriate, . . . dismissal.” [Thompson v. Housing Auth., 782 F.2d 829, 831 \(9th Cir.
6 1986\)](#). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an
7 action, failure to obey a court order, or failure to comply with local rules. *See, e.g. Ghazali v.*
8 [Moran, 46 F.3d 52, 53-54 \(9th Cir. 1995\)](#) (dismissal for noncompliance with local rule); [Ferdik](#)
9 [v. Bonzelet, 963 F.2d 1258, 1260-61 \(9th Cir. 1992\)](#) (dismissal for failure to comply with an
10 order requiring amendment of complaint); [Carey v. King, 856 F.2d 1439, 1440-41 \(9th Cir.](#)
11 [1988\)](#) (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court
12 apprised of address); [Malone v. United States Postal Serv., 833 F.2d 128, 130 \(9th Cir. 1987\)](#)
13 (dismissal for failure to comply with court order); [Henderson v. Duncan, 779 F.2d 1421, 1424](#)
14 [\(9th Cir. 1986\)](#) (dismissal for lack of prosecution and failure to comply with local rules).

15
16 In determining whether to dismiss an action for lack of prosecution, failure to obey a
17 court order, or failure to comply with local rules, the court must consider several factors: (1) the
18 public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket;
19 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on
20 their merits; and (5) the availability of less drastic alternatives. [Thompson](#), 782 F.2d at 831;
21 [Henderson](#), 779 F.2d at 1423-24; [Malone](#), 833 F.2d at 130; [Ferdik](#), 963 F.2d at 1260-61; [Ghazali,](#)
22 [46 F.3d at 53.](#)

23
24 In the instant case, the Court finds that the public’s interest in expeditiously resolving this
25 litigation and the Court’s interest in managing the docket weigh in favor of dismissal. This case
26 has been pending since April 30, 2012. The third factor, risk of prejudice to defendants, also
27 weighs in favor of dismissal, since a presumption of injury arises from the occurrence of
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1 unreasonable delay in prosecuting an action. [Anderson v. Air West, Inc., 542 F.2d 522, 524 \(9th](#)
2 [Cir. 1976\)](#). The fourth factor -- public policy favoring disposition of cases on their merits -- is
3 greatly outweighed by the factors in favor of dismissal discussed herein.
4

5 Finally, a court's warning to a party that his failure to obey the court's order will result in
6 dismissal satisfies the "consideration of alternatives" requirement. [Ferdik, 963 F.2d at 1262](#);
7 [Malone, 833 at 132-33](#); [Henderson, 779 F.2d at 1424](#). The Court's September 28, 2012, Order to
8 Show Cause expressly stated: "Failure to [comply] will result in a recommendation that this
9 action be dismissed for failure to follow the Court's orders and failure to prosecute this action."
10 Thus, Plaintiff had adequate warning that dismissal would result from noncompliance with the
11 Court's order.

12 **RECOMMENDATION**

13 Accordingly, the Court HEREBY RECOMMENDS that this action be DISMISSED for
14 failure to follow a Court order and for failure to prosecute.

15 These Findings and Recommendations will be submitted to the Honorable Anthony W.
16 Ishii, pursuant to the provisions of [Title 28 U.S.C. § 636\(b\)\(1\)](#). Within **thirty (30) days** after
17 being served with these Findings and Recommendations, Plaintiff may file written objections
18 with the Court. The document should be captioned "Objections to Magistrate Judge's Findings
19 and Recommendations." Plaintiff is advised that failure to file objections within the specified
20 time may waive the right to appeal the District Court's order. [Martinez v. Ylst, 951 F.2d 1153](#)
21 (9th Cir. 1991).
22

23
24 IT IS SO ORDERED.

25 Dated: November 9, 2012

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