

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

JERMANY DEVON THOMAS,
Plaintiff,
v.
FRESNO CITY COLLEGE, et al.,
Defendants.

Case No. 1:15-cv-00826-DAD-BAM

**FINDINGS AND RECOMMENDATIONS
REGARDING DISMISSAL OF THIS
ACTION FOR FAILURE TO OBEY A
COURT ORDER**

Plaintiff Jermany Devon Thomas (“Plaintiff”), proceeding *pro se* and *in forma pauperis*, initiated this civil action on June 1, 2015. (Doc. 1). On December 2, 2015, the Court issued an order dismissing Plaintiff’s first amended complaint with leave to amend. (Doc. 13). Plaintiff filed his second amended complaint on January 4, 2016. (Doc. 17). Before the Court completed its screening of the second amended complaint, Plaintiff filed a motion for leave to file a supplemental complaint. (Doc. 18). On February 12, 2016, the Court granted Plaintiff’s motion and directed him to file a third amended complaint within thirty (30) days of the service of the order. (Doc. 19). More than thirty days have passed and Plaintiff has failed to comply with this Court’s order.

DISCUSSION

Local Rule 110 provides that “[f]ailure . . . 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 . . .

1 within the inherent power of the Court.” District courts have the inherent power to control their
2 dockets and “[i]n the exercise of that power, they may impose sanctions including, where
3 appropriate, . . . dismissal.” *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A
4 court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action,
5 failure to obey a court order, or failure to comply with local rules. *See, e.g., Ghazali v. Moran*, 46
6 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*,
7 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring
8 amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for
9 failure to comply with local rule requiring pro se plaintiffs to keep court apprised of address);
10 *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply
11 with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack
12 of prosecution and failure to comply with local rules). In determining whether to dismiss an
13 action for lack of prosecution, failure to obey a court order, or failure to comply with local rules,
14 the court must consider several factors: (1) the public’s interest in expeditious resolution of
15 litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4)
16 the public policy favoring disposition of cases on their merits; and (5) the availability of less
17 drastic alternatives. *Ghazali*, 46 F.3d at 53; *Ferdik*, 963 F.2d at 1260-61; *Malone*, 833 F.2d at
18 130; *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24.

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 because
21 there is no indication that Plaintiff intends to prosecute this action. The third factor, risk of
22 prejudice to defendants, also weighs in favor of dismissal because a presumption of injury arises
23 from any unreasonable delay in prosecuting an action. *Anderson v. Air West, Inc.*, 542 F.2d 522,
24 524 (9th Cir. 1976). The fourth factor, public policy favoring disposition of cases on their merits,
25 is greatly outweighed by the factors in favor of dismissal. Finally, a court’s warning to a party
26 that his failure to obey the court’s order will result in dismissal satisfies the “consideration of
27 alternatives” requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 at 132-33; *Henderson*, 779
28 F.2d at 1424. The Court’s order directing Plaintiff to file his third amended complaint was clear

1 that dismissal would result from non-compliance with the Court's order. (Doc. 19 at 3).

2
3 **CONCLUSION AND RECOMMENDATION**

4 Based on the above, **IT IS HEREBY RECOMMENDED** that this action be
5 **DISMISSED** for Plaintiff's failure to comply with a court order.

6 These Findings and Recommendations will be submitted to the United States District
7 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
8 **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may
9 file written objections with the Court. The document should be captioned "Objections to
10 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
11 objections within the specified time may result in the waiver of the "right to challenge the
12 magistrate's factual findings" on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014)
13 (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

14 IT IS SO ORDERED.

15 Dated: March 23, 2016

16 /s/ Barbara A. McAuliffe
17 UNITED STATES MAGISTRATE JUDGE