

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

LOVELL BURTON,

 Plaintiff,

 v.

ZERO WASTE SOLUTIONS,

 Defendant.

CASE NO. 1:15-cv-01562-LJO-MJS

**FINDINGS AND RECOMMENDATION TO
DISMISS ACTION WITHOUT PREJUDICE
FOR FAILURE TO OBEY A COURT
ORDER AND FAILURE TO PROSECUTE**

(ECF No. 9)

**FOURTEEN-DAY OBJECTION
DEADLINE**

Plaintiff is proceeding pro se and in forma pauperis in this employment discrimination and retaliation action filed on October 14, 2015.

On February 23, 2016, Plaintiff's first amended complaint was dismissed for failure to state a claim. (ECF No. 9.) Plaintiff was granted until March 28, 2016, to file a second amended complaint. That deadline has now passed, and Plaintiff has not responded to the Court's order.

Local Rule 110 provides that "failure of counsel or 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 . . . within the inherent power of the Court." District courts have the inherent power to control their dockets and "in the exercise of that power, they may

1 impose sanctions including, where appropriate, default or dismissal.” Thompson v.
2 Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based
3 on a party’s failure to prosecute, failure to obey a court order, or failure to comply with
4 local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for
5 noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir.
6 1992) (dismissal for failure to comply with an order requiring amendment of a complaint);
7 Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply
8 with local rule requiring pro se plaintiffs to keep court apprised of address); Malone v.
9 U.S. Postal Service, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to comply
10 with a court order); Henderson v. Duncan, 779 F.2d 1421, 1424-25 (9th Cir. 1986)
11 (dismissal for 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
13 a court order, or failure to comply with local rules, the Court must consider several
14 factors: (1) the public’s interest in expeditious resolution of litigation, (2) the Court’s need
15 to manage its docket, (3) the risk of prejudice to the defendants, (4) the public policy
16 favoring disposition of cases on their merits, and (5) the availability of less drastic
17 alternatives. Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423.

18 In the instant case, the public’s interest in expeditiously resolving this litigation
19 and the Court’s interest in managing its docket weigh in favor of dismissal. The third
20 factor, risk of prejudice to Defendants, also weighs in favor of dismissal, since a
21 presumption of injury arises from the occurrence of unreasonable delay in prosecuting
22 this action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor –
23 public policy favoring disposition of cases on their merits – is greatly outweighed by the
24 factors in favor of dismissal discussed herein. Finally, as for the availability of lesser
25 sanctions, at this stage in the proceedings there is little available which would constitute
26 a satisfactory lesser sanction while preserving scarce Court resources. Plaintiff has not
27
28

1 paid the filing fees in this action and likely is unable to pay, making monetary sanctions
2 of little use.

3 Based on the foregoing, it is HEREBY RECOMMENDED that the action be
4 dismissed, without prejudice, for failure to obey a court order and failure to prosecute.

5 These Findings and Recommendations are submitted to the United States District
6 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
7 fourteen (14) days after being served with these Findings and Recommendations, any
8 party may file written objections with the Court and serve a copy on all parties. Such a
9 document should be captioned "Objections to Magistrate Judge's Findings and
10 Recommendations." Any reply to the objections shall be served and filed within fourteen
11 (14) days after service of the objections. The parties are advised that failure to file
12 objections within the specified time may result in the waiver of rights on appeal.
13 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923
14 F.2d 1391, 1394 (9th Cir. 1991)).

15
16 IT IS SO ORDERED.

17 Dated: April 13, 2016

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

19
20
21
22
23
24
25
26
27
28