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

CARLOS G. SANCHEZ,
Petitioner,

v.
S. FRAUENHEIM,
Respondent.

1:16-cv-00600 LJO MJS HC

**FINDINGS AND RECOMMENDATION TO
DISMISS ACTION FOR A FAILURE TO
FOLLOW COURT ORDER**

On April 29, 2016, Petitioner filed a petition for writ of habeas corpus. On May 3, 2016, the Court screened the petition and determined that Petitioner failed to sign the petition as required by Local Rule 131. (ECF No. 4.) Petitioner was provided twenty (20) days to file a signed declaration that he personally submitted the petition, and was forewarned that failure to respond would result in the dismissal of the petition. (*Id.*) Over twenty (20) days have passed and Petitioner has not filed a response to the order.

I. DISCUSSION

Local Rule 110 provides that "[f]ailure 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 impose sanctions including, where appropriate . . . dismissal of a case." Thompson v.

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

18 In the instant case, the Court finds that the public's interest in expeditiously
19 resolving this litigation and the Court's interest in managing the docket weigh in favor of
20 dismissal because it does not appear that Plaintiff has made a good faith effort to
21 prosecute this matter. Petitioner did not file a signed petition or signed declaration to
22 attest that he personally filed the petition, despite the Court's order to do so.

23 The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
24 because a presumption of injury arises from any unreasonable delay in prosecuting an
25 action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor, public
26 policy favoring disposition of cases on their merits, is greatly outweighed by the factors in
27 favor of dismissal. Finally, a court's warning to a party that his failure to obey the court's
28 order will result in dismissal satisfies the "consideration of alternatives" requirement.

1 Ferdik, 963 F.2d at 1262; Malone, 833 F.2d at 132-33; Henderson, 779 F.2d at 1424.
2 Here, the Court's order was clear that dismissal would result from non-compliance with
3 the order. (See ECF No. 7 ["[F]ailure to follow this order will result in dismissal of the
4 petition pursuant to Local Rule 110."].)

5 **II. RECOMMENDATION**

6 Accordingly, the Court HEREBY RECOMMENDS that this action be DISMISSED
7 for Plaintiff's failure to comply with a court order.

8 This Findings and Recommendation is submitted to the assigned United States
9 District Court Judge, pursuant to the provisions of Title 28 of the United States Code
10 section 636 (b)(1)(B). Within thirty (30) days after being served with a copy, any party
11 may file written objections with the court and serve a copy on all parties. Such a
12 document should be captioned "Objections to Magistrate Judge's Findings and
13 Recommendation." The Court will then review the Magistrate Judge's ruling pursuant to
14 Title 28 of the United States Code section 636(b)(1)(C). The parties are advised that
15 failure to file objections within the specified time may waive the right to appeal the
16 District Court's order. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014).

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18 IT IS SO ORDERED.

19 Dated: May 31, 2016

20 /s/ Michael J. Seng
21 UNITED STATES MAGISTRATE JUDGE
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