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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

8 WILLIE B. PENILTON,

) 1:05-cv-00691 OWW GSA

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10 Plaintiff,

) FINDINGS AND RECOMMENDATION  
) RECOMMENDING THAT THE CASE BE  
) DISMISSED

11 v.

12 GEORGE G. BENTON et al.,

13  
14 Defendants.  
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18 Plaintiff, appearing pro se, filed the instant pro se civil rights complaint under 42 U.S.C.  
19 § 1983 on May 23, 2005. Plaintiff's last communication with this court was on October 13, 2006  
20 when he filed his second amended complaint. On January 9, 2009, this court ordered that no  
21 later than **thirty (30)** days of the date of the order, Plaintiff shall file with the court a notice of his  
22 current address and his continued intent to prosecute this action. The thirty (30) day period has  
23 now expired, and plaintiff has not filed a notice of his current address or informed the court that  
24 he intends to prosecute the action.

25 Pursuant to Federal Rule of Civil Procedure 41(b), a district court may sua sponte dismiss  
26 an action for failure to prosecute or to comply with a court order. See, Link v. Wabash R.R., 370  
27 U.S. 626, 633 (1962), McKeever v. Block, 932 F. 2d 795, 797 (9<sup>th</sup> Cir. 1991). But such dismissal  
28 should only be ordered when the failure to comply is unreasonable. Id. A court should afford the

1 litigant prior notice of its intention to dismiss. See, Malone v. United States Postal Service, 833  
2 F. 2d 128, 133 (9<sup>th</sup> Cir. 1987).

3 Local Rule 11-110 provides that “failure of counsel or of a party to comply with these  
4 Local Rules or with any order of the Court may be grounds for the imposition by the Court of any  
5 and all sanctions . . . within the inherent power of the Court.” District courts have the inherent  
6 power to control their dockets and “in the exercise of that power, they may impose sanctions  
7 including, where appropriate . . . dismissal of a case.” Thompson v. Housing Auth., 782 F.2d  
8 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s  
9 failure to prosecute an action, failure to obey a court order, or failure to comply with local rules.  
10 See, e.g. Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)(dismissal for noncompliance with  
11 local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to  
12 comply with an order requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-  
13 41 (9th Cir. 1988)(dismissal for failure to comply with local rule requiring pro se plaintiffs to  
14 keep court apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir.  
15 1987)(dismissal for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421,  
16 1424 (9th Cir. 1986)(dismissal for failure to lack of prosecution and failure to comply with local  
17 rules).

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

25 In the instant case, the court finds that the public’s interest in expeditiously resolving this  
26 litigation and the court’s interest in managing the docket weigh in favor of dismissal. The third  
27 factor, risk of prejudice to defendants, also weighs in favor of dismissal, since a presumption of  
28 injury arises from the occurrence of unreasonable delay in prosecuting an action. Anderson v.

1 Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor -- public policy favoring  
2 disposition of cases on their merits -- is greatly outweighed by the factors in favor of dismissal  
3 discussed herein. Finally, a court's warning to a party that his failure to obey the court's order  
4 will result in dismissal satisfies the "consideration of alternatives" requirement. Ferdik v.  
5 Bonzelet, 963 F.2d at 1262; Malone, 833 at 132-33; Henderson, 779 F.2d at 1424. The court's  
6 order expressly stated: "Failure to comply with this order will result in dismissal of this action."  
7 Thus, plaintiff had adequate warning that dismissal would result from his noncompliance with  
8 the court's order.

9 Accordingly, the court HEREBY RECOMMENDS that this action be dismissed based on  
10 plaintiff's failure to obey the court's order of January 9, 2009.

11 These findings and recommendations are submitted to the United States District Judge  
12 Oliver W. Wanger, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty days  
13 after being served with these findings and recommendations, plaintiff may file written objections  
14 with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings  
15 and Recommendations." The plaintiff is advised that failure to file objections within the  
16 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951  
17 F.2d 1153 (9th Cir. 1991).

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19 IT IS SO ORDERED.

20 **Dated: February 18, 2009**

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE