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

RICHARD A. HOLCOMB,

Plaintiff,

1:06 CV 0741 OWW WMW PC

vs.

FINDING S AND RECOMMENDATION

MTA AMAYA, et al.,

Defendants.

Plaintiff is a former state prisoner proceeding pro se and in forma pauperis in a civil rights actin pursuant to 42 U.S.C. § 1983.

On January 13, 2009, an order was entered, directing Plaintiff to inform the court within thirty days whether he intends to proceed on the May 14, 2007, amended complaint or file a second amended complaint. Plaintiff was specifically cautioned that if he failed to do so, this action would be dismissed. Plaintiff has failed to respond to the January 13, 2009, order.

Local Rule 11-110 provides that “failure of counsel or of a party to comply with these Local Rules or with any order of the Court may be grounds for the 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. Housing Auth., 782 F.2d

1 829, 831 (9<sup>th</sup> Cir. 1986). A court may dismiss an action, with prejudice, based on a party's  
2 failure to prosecute an action, failure to obey a court order, or failure to comply with local rules.  
3 See, e.g. Ghazali v. Moran, 46 F.3d 52, 53-54 (9<sup>th</sup> Cir. 1995)(dismissal for noncompliance with  
4 local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9<sup>th</sup> Cir. 1992) (dismissal for failure to  
5 comply with an order requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-  
6 41 (9<sup>th</sup> Cir. 1988)(dismissal for failure to comply with local rule requiring pro se plaintiffs to  
7 keep court apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9<sup>th</sup> Cir.  
8 1987)(dismissal for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421,  
9 1424 (9<sup>th</sup> Cir. 1986)(dismissal for failure to lack of prosecution and failure to comply with local  
10 rules).

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

18 In the instant case, the court finds that the public's interest in expeditiously resolving this  
19 litigation and the court's interest in managing the docket weigh in favor of dismissal. The third  
20 factor, risk of prejudice to defendants, also weighs in favor of dismissal, since a presumption of  
21 injury arises from the occurrence of unreasonable delay in prosecuting an action. Anderson v.  
22 Air West, 542 F.2d 522, 524 (9<sup>th</sup> Cir. 1976). The fourth factor -- public policy favoring  
23 disposition of cases on their merits -- is greatly outweighed by the factors in favor of dismissal  
24 discussed herein. Finally, a court's warning to a party that his failure to obey the court's order  
25 will result in dismissal satisfies the "consideration of alternatives" requirement. Ferdik v.  
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1 Bonzelet, 963 F.2d at 1262; Malone, 833 at 132-33; Henderson, 779 F.2d at 1424.

2           Accordingly, the court HEREBY RECOMMENDS that this action be dismissed for  
3 plaintiff's failure to obey a court order.

4           These findings and recommendations are submitted to the United States District Judge  
5 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636 (b) (1). Within thirty  
6 days after being served with these findings and recommendations, any party may file written  
7 objections with the court and serve a copy on all parties. Such a document should be captioned  
8 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections  
9 shall be served and filed within ten days after service of the objections. The parties are advised  
10 that failure to file objections within the specified time may waive the right to appeal the District  
11 Court's order. Martinez v. Y1st, 951 F.2d 1153 (9th Cir. 1991).

12  
13 IT IS SO ORDERED.

14 **Dated: February 18, 2009**

**/s/ William M. Wunderlich**  
**UNITED STATES MAGISTRATE JUDGE**