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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

BRYAN DAVIS,

Plaintiff,

v.

JORDIN, et al.,

Defendants.

CASE NO. 1:07-cv-00302-LJO-DLB PC

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DISMISSAL OF ACTION  
FOR FAILURE TO OBEY A COURT ORDER  
AND FAILURE TO STATE A CLAIM

(Doc. 17)

OBJECTION DUE WITHIN TWENTY DAYS

Plaintiff Bryan Davis (“Plaintiff”) is a former state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On November 25, 2008, the Court dismissed Plaintiff’s amended complaint for failure to state any claims upon which relief may be granted and ordered Plaintiff to file a second amended complaint within thirty days from the date of service of the order. More than thirty days have passed and Plaintiff has not filed a second amended complaint. On December 9, 2008, Plaintiff filed a Notice of “Declining Second Amendment [sic] Complaint.” Plaintiff stated that he would not file a second amended complaint because of a perceived conspiracy by this Court.

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 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an

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

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

15 In the instant case, the Court finds that the public's interest in expeditiously resolving this  
16 litigation and the court's interest in managing the docket weigh in favor of dismissal, as this case has  
17 been pending since February 26, 2007. The third factor, risk of prejudice to defendant, also weighs  
18 in favor of dismissal, since a presumption of injury arises from the occurrence of unreasonable delay  
19 in prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth  
20 factor -- public policy favoring disposition of cases on their merits -- is greatly outweighed by the  
21 factors in favor of dismissal discussed herein. Finally, a court's warning to a party that his failure  
22 to obey the court's order will result in dismissal satisfies the "consideration of alternatives"  
23 requirement. Ferdik v. Bonzelet, 963 F.2d at 1262; Malone, 833 at 132-33; Henderson, 779 F.2d  
24 at 1424. The court's order requiring plaintiff to file a second amended complaint expressly stated:  
25 "If Plaintiff fails to comply with this order, this action will be dismissed for failure to obey a court  
26 order and for failure to state a claim." Thus, plaintiff had adequate warning that dismissal would  
27 result from his noncompliance with the court's order.

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