

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

JAMES R. BRISCOE,

CASE NO. 1:07-cv-0320-AWI-MJS (PC)

Plaintiff,

FINDINGS AND RECOMMENDATION
THAT PLAINTIFF'S COMPLAINT BE
DISMISSED FOR FAILURE TO COMPLY
WITH A COURT ORDER

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS, et al.,

(ECF No. 117)

Defendants.

_____ /

Plaintiff James R. Briscoe ("Plaintiff"), proceeding pro se, filed this civil action on February 27, 2007. (Compl., ECF No. 1.) Plaintiff filed a Second Amended Complaint on October 15, 2007 (Second Am. Compl., ECF No. 27), and the Court ordered service of the Second Amended Complaint soon thereafter. (Order, ECF No. 29.) Defendants County of Fresno, Osborn, Morris, Lockie, Prado, Rendondo, and Mims (collectively "Fresno County Defendants") filed a Motion to Dismiss or Alternatively, a Motion for a More Definite Statement on April 3, 2008. (Motion, ECF No. 48.) Additionally, Defendants Woodford, Tilton, Sims, and Robinson (collectively "CDCR Defendants") filed a Motion to Dismiss on the same day. (Motion, ECF No. 50.) The Court denied the CDCR Defendants' Motion to Dismiss and granted in part and denied in part the Fresno County Defendants' Motion to Dismiss. (Order, ECF No. 63.) The parties then proceeded with discovery.

The CDCR Defendants filed a Motion for Summary Judgment on October 13, 2010. (Motion, ECF No. 98.) Plaintiff was previously informed about how to oppose a motion for summary judgment. (Informational Order, ECF No. 8.) Plaintiff did not respond to the

1 CDCR's Motion for Summary Judgment. On April 27, 2011, Plaintiff was ordered to file an
2 Opposition to the CDCR Defendants' Motion for Summary Judgment by May 25, 2011.
3 (Order, ECF No. 117.) Plaintiff was warned that failure to comply with the Court's Order
4 would result in dismissal of the action. (Id.) The May 25, 2011 deadline has passed and
5 Plaintiff has not complied with or otherwise responded to the Court's Order.

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

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

28 In the instant case, the Court finds that the public's interest in expeditiously resolving

1 this litigation and the Court's interest in managing the docket weigh in favor of dismissal.
2 The third factor, risk of prejudice to defendants, also weighs in favor of dismissal, since a
3 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an
4 action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor -- public
5 policy favoring disposition of cases on their merits -- is greatly outweighed by the factors in
6 favor of dismissal discussed herein. Finally, a court's warning to a party that his failure to
7 obey the court's order will result in dismissal satisfies the "consideration of alternatives"
8 requirement. Ferdik v. Bonzelet, 963 F.2d at 1262; Malone, 833 at 132-33; Henderson, 779
9 F.2d at 1424. The Court's Order expressly stated: "Failure to respond to this Order or file
10 an opposition to the Motion for Summary Judgment will result in dismissal of this action."
11 (Order, ECF No. 117.) Thus, Plaintiff had adequate warning that dismissal would result
12 from his noncompliance with the Court's Order.

13 Accordingly, the Court hereby RECOMMENDS that this action be dismissed without
14 prejudice for failure to comply with the Court's Order.

15 These Findings and Recommendations are submitted to the United States District
16 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).
17 Within thirty days after being served with these findings and recommendations, any party
18 may file written objections with the Court and serve a copy on all parties. Such a document
19 should be captioned "Objections to Magistrate Judge's Findings and Recommendations."
20 Any reply to the objections shall be served and filed within ten days after service of the
21 objections. The parties are advised that failure to file objections within the specified time
22 may waive the right to appeal the District Court's order. Martinez v. Y1st, 951 F.2d 1153
23 (9th Cir. 1991).

24

25 IT IS SO ORDERED.

26 Dated: June 29, 2011

Is! Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

27

28