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6 **UNITED STATES DISTRICT COURT**  
78 EASTERN DISTRICT OF CALIFORNIA  
910 RAYNARD B. HILL, CASE NO. 1:07-cv-01866-AWI DLB PC  
11 v. Plaintiff, FINDINGS AND RECOMMENDATIONS  
12 TATE, et al., RECOMMENDING DISMISSAL OF ACTION  
13 Defendants. / OBJECTIONS, IF ANY, DUE WITHIN  
14 TWENTY DAYS15 Plaintiff Raynard B. Hill (“Plaintiff”) is a state prisoner proceeding pro se and in forma  
16 pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On October 31, 2008, the Court  
17 issued an order finding that Plaintiff’s complaint states claims under the Eighth Amendment against  
18 Defendants Tate, Afra, Runyan, and McConnell, but fails to state any other claims upon which relief  
19 may be granted. The Court ordered Plaintiff, within thirty days, to either file an amended complaint  
20 curing the deficiencies identified by the Court or notify the Court in writing that he does not wish  
21 to file an amended complaint and is willing to proceed only on the claims found to be cognizable.  
22 More than thirty days have passed and Plaintiff has not complied with or otherwise responded to the  
23 Court’s order.24 Local Rule 11-110 provides that “failure of counsel or of a party to comply with these Local  
25 Rules or with any order of the Court may be grounds for the imposition by the Court of any and all  
26 sanctions . . . within the inherent power of the Court.” District courts have the inherent power to  
27 control their dockets and “in the exercise of that power, they may impose sanctions including, where  
28 appropriate . . . dismissal of a case.” Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir.

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

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

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Accordingly, it is HEREBY RECOMMENDED that this action be dismissed, without prejudice, based on Plaintiff's failure to obey the Court's order of October 31, 2008.

These Findings and Recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **twenty (20) days** after being served with these Findings and Recommendations, Plaintiff may file written objections with the Court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: January 7, 2009

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE