UNITED STATES DISTRICT COURT	
EASTERN DISTRICT OF CALIFORNIA	
BERNARD ANDREW WHITE,	CASE NO. 1:08-cv-00365-OWW DLB PC
Plaintiff,	ORDER ON MOTION/OBJECTION
V.	(Doc. 11)
THE STATE OF CALIFORNIA, et al.,	FINDINGS AND RECOMMENDATIONS RECOMMENDING DISMISSAL OF ACTION
Defendants.	FOR FAILURE TO OBEY A COURT ORDER AND FAILURE TO STATE A CLAIM
	(Doc. 10)
/	OBJECTION DUE WITHIN TWENTY DAYS

Plaintiff Bernard Andrew White ("plaintiff") is a state prisoner proceeding pro se and in
forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On December 15, 2008, the
court dismissed plaintiff's complaint for failure to state any claims upon which relief may be granted
and ordered plaintiff to file an amended complaint within thirty days from the date of service of the
order. More than thirty days have passed and plaintiff has not filed an amended complaint.

On December 31, 2008, Plaintiff has filed a document entitled "Objection' The Plaintiff Motion for F.R 47-162 Examination to file and Amendment Complaint". (Doc. 11). Plaintiff's objection/motion is largely incomprehensible, although it appears that Plaintiff objects to the order dismissing his complaint. Because Plaintiff was granted leave to amend, Plaintiff's motion, to the extent that Plaintiff is in fact seeking leave to amend, is disregarded.

27 ///

28 ///

1 Local Rule 11-110 provides that "failure of counsel or of a party to comply with these Local 2 Rules or with any order of the Court may be grounds for the imposition by the Court of any and all 3 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 4 5 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 6 7 action, failure to obey a court order, or failure to comply with local rules. See, e.g. Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. 8 9 Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order 10 requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised of 11 address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to 12 13 comply with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to lack of prosecution and failure to comply with local rules). 14

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

21 In the instant case, the court finds that the public's interest in expeditiously resolving this 22 litigation and the court's interest in managing the docket weigh in favor of dismissal, as this case has been pending since March 19, 2008. The third factor, risk of prejudice to defendants, also weighs 23 in favor of dismissal, since a presumption of injury arises from the occurrence of unreasonable delay 24 25 in prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth 26 factor -- public policy favoring disposition of cases on their merits -- is greatly outweighed by the factors in favor of dismissal discussed herein. Finally, a court's warning to a party that his failure 27 28 to obey the court's order will result in dismissal satisfies the "consideration of alternatives"

2

requirement. <u>Ferdik v. Bonzelet</u>, 963 F.2d at 1262; <u>Malone</u>, 833 at 132-33; <u>Henderson</u>, 779 F.2d
 at 1424. The court's order requiring plaintiff to file an amended complaint expressly stated: "If
 Plaintiff fails to file an amended complaint, the Court will recommend that this action be dismissed,
 with prejudice, for failure to state a claim." Thus, plaintiff had adequate warning that dismissal
 would result from his noncompliance with the court's order.

Accordingly, it is HEREBY RECOMMENDED that this action be dismissed, with prejudice, for failure to obey a court order and failure to state a claim upon which relief may be granted.

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)(l). 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. <u>Martinez v. Ylst</u>, 951 F.2d
1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: February 9, 2009

/s/ Dennis L. Beck UNITED STATES MAGISTRATE JUDGE