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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

LONNIE LEE POSLOF, SR.,

Plaintiff,

v.

PLEASANT VALLEY STATE PRISON,  
et al.,

Defendants.

CASE NO. 1:08-cv-0593 -LJO-DLB PC

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

(Doc. 7)

OBJECTION DUE WITHIN THIRTY DAYS

\_\_\_\_\_  
Plaintiff Lonnie Lee Poslof, Sr. (“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 November 17, 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 or otherwise responded to the court’s order.<sup>1</sup>

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.

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<sup>1</sup> On November 24, 2008, Plaintiff filed a motion for appointment of counsel. (Doc. 8). Plaintiff’s motion is addressed and denied by order issued separately.

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).

10 In determining whether to dismiss an action for lack of prosecution, failure to obey a court  
11 order, or failure to comply with local rules, the court must consider several factors: (1) the public's  
12 interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk  
13 of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and  
14 (5) the availability of less drastic alternatives. Thompson, 782 F.2d at 831; Henderson, 779 F.2d at  
15 1423-24; Malone, 833 F.2d at 130; 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 has  
18 been pending since April 30, 2008. The third factor, risk of prejudice to defendants, also weighs in  
19 favor of dismissal, since a presumption of injury arises from the occurrence of unreasonable delay  
20 in prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth  
21 factor -- public policy favoring disposition of cases on their merits -- is greatly outweighed by the  
22 factors in favor of dismissal discussed herein. Finally, a court's warning to a party that his failure  
23 to obey the court's order will result in dismissal satisfies the "consideration of alternatives"  
24 requirement. Ferdik v. Bonzelet, 963 F.2d at 1262; Malone, 833 at 132-33; Henderson, 779 F.2d  
25 at 1424. The court's order requiring plaintiff to file a second amended complaint expressly stated:  
26 "The failure to comply with this order will result in dismissal of this action for failure to state a claim  
27 upon which relief may be granted and for failure to obey a court order." Thus, plaintiff had adequate  
28 warning 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 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)(1). Within **thirty (30) 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 20, 2009**

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE