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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

EDWARD GONZALES,

Plaintiff,

v.

JAMES YATES, et al.,

Defendants.

CASE NO. 1:08-cv-00684-AWI-SKO PC

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DISMISSAL OF ACTION

OBJECTIONS DUE WITHIN 30 DAYS

Plaintiff Edward Gonzales (“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 March 19, 2010, the Court screened Plaintiff’s complaint pursuant to [28 U.S.C. § 1915A](#). Plaintiff was ordered to either file an amended complaint or to notify the Court of his willingness to proceed only on the claims found to be cognizable in the Court’s screening order. Plaintiff has not responded to the Court’s order and has not otherwise communicated with the Court since the Court issued the screening order. Plaintiff has failed to obey the Court’s order and has not otherwise taken any action to litigate this lawsuit.

Local Rule 110 provides that “[f]ailure of counsel or of a party to comply with . . . any order of the Court may be grounds for imposition by the Court of any and all sanctions authorized by statute or Rule or 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 Authority of City of Los Angeles, 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 action, failure to obey a court order, or failure to comply with the local rules.

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

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

14 In this case, the Court finds that the public's interest in expeditiously resolving this litigation  
15 and the Court's interest in managing the docket weigh in favor of dismissal. The third factor, risk  
16 of prejudice to defendants, also weighs in favor of dismissal since a presumption of injury arises  
17 from the occurrence of unreasonable delay in prosecuting an action. [Anderson v. Air West, 542 F.2d](#)  
18 [522, 524 \(9th Cir. 1976\)](#). The fourth factor, public policy favoring disposition of cases on their  
19 merits, is greatly outweighed by the factors in favor of dismissal. Finally, a Court's warning to a  
20 party that the failure to obey a Court order will result in dismissal satisfies the "consideration of less  
21 drastic alternatives" requirement. [Ferdik, 963 F.2d at 1262](#); [Malone, 833 F.2d at 132-33](#); [Henderson,](#)  
22 [779 F.2d at 1424](#). The Court notes that in the March 19, 2010 screening order, Plaintiff was  
23 explicitly warned that "[i]f Plaintiff fails to comply with this order, this action will be dismissed for  
24 failure to obey a court order." (Order Requiring Pl. Either To File Am. Compl. Or To Notify Court  
25 Of Willingness To Proceed Only On Claims Found To Be Cognizable 7:3-4.)

26 Accordingly, the Court HEREBY RECOMMENDS that this action be dismissed for  
27 Plaintiff's failure to prosecute and failure to obey a court order.

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