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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ERIC LEE HACKETT,	)	1:08-CV-01041 SMS HC
	)	
Petitioner,	)	ORDER DIRECTING CLERK OF COURT TO ASSIGN DISTRICT JUDGE
	)	
v.	)	FINDINGS AND RECOMMENDATION REGARDING PETITIONER'S FAILURE TO FOLLOW A COURT ORDER
	)	[Doc. #6]
CITY OF FRESNO,	)	
	)	
Respondent.	)	

\_\_\_\_ Petitioner is proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On October 21, 2008, the Court issued a second order regarding consent or request for reassignment which required Petitioner to complete and return the form within thirty (30) days indicating either consent to the jurisdiction of the Magistrate Judge, or requesting that the case be reassigned to a District Judge. Over thirty (30) days passed, and Petitioner did not comply with the court order.

On December 3, 2008, the undersigned issued an order directing Petitioner to show cause why the petition should not be dismissed for his failure to comply with a court order. He was granted thirty (30) days to respond. Over thirty (30) days have again passed, and Petitioner has failed to respond in any manner.

1 **DISCUSSION**

2 Local Rule 11-110 provides that “a failure of counsel or of a party to comply with these Local  
3 Rules or with any order of the Court may be grounds for the imposition by the Court of any and all  
4 sanctions . . . within the inherent power of the Court.” District courts have the inherent power to  
5 control their dockets and “in the exercise of that power, they may impose sanctions including, where  
6 appropriate . . . dismissal of a case.” Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir.  
7 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an  
8 action, failure to obey a court order, or failure to comply with local rules. See, e.g., Ghazali v.  
9 Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v.  
10 Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order  
11 requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988)  
12 (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprized of  
13 address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to  
14 comply with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for  
15 lack of prosecution and failure to comply with local rules). In determining whether to dismiss an  
16 action for lack of prosecution, failure to obey a court order, or failure to comply with local rules, the  
17 court must consider several factors: (1) the public’s interest in expeditious resolution of litigation;  
18 (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public  
19 policy favoring disposition of cases on their merits; and (5) the availability of less drastic  
20 alternatives. Ghazali, 46 F.3d at 53; Ferdik, 963 F.2d at 1260-61; Malone, 833 F.2d at 130;  
21 Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24.

22 In the instant case, the Court finds that the public’s interest in expeditiously resolving this  
23 litigation and the Court’s interest in managing the docket weigh in favor of dismissal because this  
24 case has been pending in this Court since July 14, 2008. The third factor, risk of prejudice to  
25 defendants, also weighs in favor of dismissal because a presumption of injury arises from any  
26 unreasonable delay in prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir.  
27 1976). The fourth factor, public policy favoring disposition of cases on their merits, is greatly  
28 outweighed by the factors in favor of dismissal. Finally, a court’s warning to a party that his failure

1 to obey the court's order will result in dismissal satisfies the "consideration of alternatives"  
2 requirement. Ferdik, 963 F.2d at 1262; Malone, 833 at 132-33; Henderson, 779 F.2d at 1424. The  
3 Court's order to show case was clear that dismissal would result from non-compliance.

4 **ORDER**

5 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court is DIRECTED to randomly  
6 assign a District Judge to this case.

7 **RECOMMENDATION**

8 Accordingly, the Court HEREBY RECOMMENDS that this action be DISMISSED for  
9 Petitioner's failure to comply with a court order.

10 This Findings and Recommendation is submitted to the assigned District Judge, United  
11 States District Court Judge, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule  
12 72-304 of the Local Rules of Practice for the United States District Court, Eastern District of  
13 California. Within eleven (11) days (plus three days if served by mail), after being served with a  
14 copy, any party may file written objections with the court and serve a copy on all parties. Such a  
15 document should be captioned "Objections to Magistrate Judge's Findings and Recommendation."  
16 The Court will then review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636(b)(1)(C). The  
17 parties are advised that failure to file objections within the specified time may waive the right to  
18 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

19 IT IS SO ORDERED.

20 **Dated: January 13, 2009**

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE