

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

9 DORIS S. GAINES, ) 1:08-cv-01563 OWW GSA  
10 Plaintiff, ) FINDINGS AND RECOMMENDATION  
11 v. ) TO DISMISS CASE FOR FAILURE TO  
12 MICHAEL J. ASTRUE, ) OBEY A COURT ORDER  
13 Commissioner of Social Security, ) (DOCUMENT #4)  
14 Defendant. ) OBJECTIONS, IF ANY, DUE IN THIRTY  
 ) DAYS

15 Plaintiff DORIS S. GAINES (“plaintiff”) is proceeding pro se in an action seeking  
16 review of the Commissioner’s denial of her application for benefits. On December 4, 2008, the court  
17 issued an order requiring plaintiff to pay the filing fee within thirty days of the date of service of the  
18 order, or, in the alternative, submit a renewed application to proceed in forma pauperis. More than  
19 thirty days have passed and plaintiff has not complied with or otherwise responded to the court’s order.

20 Local Rule 11-110 provides that “failure of counsel or of a party to comply with these  
21 Local Rules or with any order of the Court may be grounds for the imposition by the Court of any and  
22 all sanctions . . . within the inherent power of the Court.” District courts have the inherent power to  
23 control their dockets and “in the exercise of that power, they may impose sanctions including, where  
24 appropriate . . . dismissal of a case.” *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th Cir. 1986).  
25 A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action,  
26 failure to obey a court order, or failure to comply with local rules. *See, e.g. Ghazali v. Moran*, 46  
27 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963  
28 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring

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

12 In the instant case, the court finds that the public's interest in expeditiously resolving  
13 this litigation and the court's interest in managing the docket weigh in favor of dismissal, as this case  
14 has been pending since October 17, 2008. The third factor, risk of prejudice to defendants, also  
15 weighs in favor of dismissal, since a presumption of injury arises from the occurrence of  
16 unreasonable delay in prosecuting an action. *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir.  
17 1976). The fourth factor -- public policy favoring disposition of cases on their merits -- is greatly  
18 outweighed by the factors in favor of dismissal discussed herein. Finally, a court's warning to a  
19 party that her failure to obey the court's order will result in dismissal satisfies the "consideration of  
20 alternatives" requirement. *Ferdik v. Bonzelet*, 963 F.2d at 1262; *Malone*, 833 at 132-33; *Henderson*,  
21 779 F.2d at 1424. The court's order requiring plaintiff to pay the \$350.00 filing fee and/or submit an  
22 application to proceed in forma pauperis expressly stated: "Failure to comply with this order will  
23 result in a recommendation that this action be dismissed." Thus, plaintiff had adequate warning that  
24 dismissal would result from her noncompliance with the court's order.

25 Accordingly, the court HEREBY RECOMMENDS that this action be dismissed  
26 based on plaintiff's failure to obey the court's order of December 4, 2008.

27 These Findings and Recommendations are submitted to the United States District  
28 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within twenty

1 (20) days after being served with these Findings and Recommendations, plaintiff may file written  
2 objections with the court. Such a document should be captioned "Objections to Magistrate Judge's  
3 Findings and Recommendations." Plaintiff is advised that failure to file objections within the  
4 specified time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d  
5 1153 (9th Cir. 1991).

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7 IT IS SO ORDERED.

8 Dated: February 12, 2009

/s/ Gary S. Austin  
9 UNITED STATES MAGISTRATE JUDGE

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