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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ANDRE M. BUTLER,

Plaintiff,

v.

S. HUBBARD, et al.,

Defendants.

CASE NO. 1:08-cv-01830 OWW DLB PC

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

(Doc. 8)

OBJECTIONS DUE WITHIN TWENTY DAYS

Plaintiff Andre M. Butler (“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 February 27, 2009, the Court issued an order requiring Plaintiff to complete and return the attached Order Re Consent or Request for Reassignment, indicating either Plaintiff’s consent to the jurisdiction of the U.S. Magistrate Judge or Plaintiff’s request that the case be reassigned to a U.S. District Judge, or show cause why sanctions, up to dismissal of the action, should not be imposed against Plaintiff for failing to obey a court order. Plaintiff was ordered to respond within thirty (30) days. More than thirty days have passed and Plaintiff has not complied with or otherwise responded to the Court’s order.

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. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an

1 action, failure to obey a court order, or failure to comply with local rules. See, e.g. Ghazali v.
2 Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v.
3 Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order
4 requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988)
5 (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised of
6 address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to
7 comply with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for
8 failure to lack of prosecution and failure to comply with local rules). In determining whether to
9 dismiss an action for lack of prosecution, failure to obey a court order, or failure to comply with local
10 rules, the Court must consider several factors: (1) the public’s interest in expeditious resolution of
11 litigation; (2) the Court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4)
12 the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic
13 alternatives. Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone, 833 F.2d at 130;
14 Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

15 In the instant case, the Court finds that the public’s interest in expeditiously resolving this
16 litigation and the Court’s interest in managing the docket weigh in favor of dismissal, as this case
17 has been pending since December 1, 2008. The third factor, risk of prejudice to defendants, also
18 weighs in favor of dismissal, since a presumption of injury arises from the occurrence of
19 unreasonable delay in prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir.
20 1976). The fourth factor -- public policy favoring disposition of cases on their merits -- is greatly
21 outweighed by the factors in favor of dismissal discussed herein. Finally, a court’s warning to a
22 party that his failure to obey the court’s order will result in dismissal satisfies the “consideration of
23 alternatives” requirement. Ferdik v. Bonzelet, 963 F.2d at 1262; Malone, 833 at 132-33; Henderson,
24 779 F.2d at 1424. The Court’s order expressly stated: “plaintiff shall complete and return the Order
25 Re Consent or Request for Reassignment...or show cause, in writing, why sanctions, up to and
26 including dismissal of this action, should not be imposed against him for failing to obey a court
27 order.” Thus, Plaintiff had adequate warning that dismissal would result from his noncompliance
28 with the Court’s order.

1 Accordingly, it is HEREBY RECOMMENDED that this action be dismissed, without
2 prejudice, based on Plaintiff's failure to obey the Court's order of February 27, 2008.

3 These Findings and Recommendations are submitted to the United States District Judge
4 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **twenty (20)**
5 **days** after being served with these Findings and Recommendations, Plaintiff may file written
6 objections with the Court. Such a document should be captioned "Objections to Magistrate Judge's
7 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
8 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d
9 1153 (9th Cir. 1991).

10
11 IT IS SO ORDERED.

12 **Dated: April 22, 2009**

/s/ Dennis L. Beck
 UNITED STATES MAGISTRATE JUDGE