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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KENNETH LEE,

1:08-cv-01883-WMW (PC)

Plaintiff,

FINDINGS AND RECOMMENDATION
TO DISMISS CASE FOR FAILURE TO
OBEY A COURT ORDER

vs.

FRESNO COUNTY JAIL, et al.,

OBJECTIONS, IF ANY, DUE IN 20 DAYS

Defendants.

_____/

Plaintiff is proceeding pro se in a civil rights action pursuant to 42 U.S.C. § 1983. On December 9, 2009, the court issued an order requiring plaintiff to submit an application to proceed in forma pauperis or pay the filing fee within thirty days of the date of service of the order. More than thirty days have passed and plaintiff has not complied with or otherwise responded to the court’s order.¹

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 The United States Postal Service returned the order on December 17, 2009 as undeliverable. A notation on the envelope indicates that plaintiff was out of custody. However, plaintiff has not notified the court of any change in his address. Absent such notice, service at a party’s prior address is fully effective. Local Rule 83-182(f).

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
10 local rules, the court must consider several factors: (1) the public's interest in expeditious resolution
11 of 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
14 130; 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
16 this litigation and the court's interest in managing the docket weigh in favor of dismissal, as this case
17 has been pending since December 9, 2009. 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 requiring plaintiff to submit an application to proceed in forma
25 pauperis expressly stated: "Failure to comply with this order will result in a recommendation that
26 this action be dismissed." Thus, plaintiff had adequate warning that dismissal would result from his
27 noncompliance with the court's order.

28 Accordingly, the court HEREBY RECOMMENDS that this action be dismissed

1 based on plaintiff's failure to obey the court's order of December 9, 2009.

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

9 IT IS SO ORDERED.

10 **Dated: February 9, 2009**

/s/ William M. Wunderlich
UNITED STATES MAGISTRATE JUDGE

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