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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LATONIA JONES,

1:09-cv-00203-DLB (PC)

Plaintiff,

ORDER DISMISSING CASE FOR FAILURE
TO OBEY A COURT ORDER AND FAILURE
TO STATE A CLAIM

vs.

FRESNO COUNTY JAIL,

DISMISSAL COUNTS AS STRIKE PURSUANT
TO 28 U.S.C. § 1915(G)

Defendant.

_____ /

Plaintiff is proceeding pro se in a civil rights action pursuant to 42 U.S.C. § 1983. On May 8, 2009, the court issued an order dismissing plaintiff's complaint with leave to file an amended complaint 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 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 May 27, 2009 and June 4, 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 address. Absent such notice, service at a party's prior address is fully effective. Local Rule 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 this
16 litigation and the court's interest in managing the docket weigh in favor of dismissal, as this case has
17 been pending since February 2, 2009. The third factor, risk of prejudice to defendants, also weighs
18 in favor of dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
19 in prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth
20 factor -- public policy favoring disposition of cases on their merits -- is greatly outweighed by the
21 factors in favor of dismissal discussed herein. Finally, a court's warning to a party that his failure to
22 obey the court's order will result in dismissal satisfies the "consideration of alternatives"
23 requirement. Ferdik v. Bonzelet, 963 F.2d at 1262; Malone, 833 at 132-33; Henderson, 779 F.2d at
24 1424. The court's order dismissing plaintiff's complaint with leave to file an amended complaint
25 within thirty days expressly stated: "If Plaintiff fails to comply with this order, the Court will dismiss
26 this action, with prejudice, for failure to obey a court order and failure to state a claim." Thus,
27 plaintiff had adequate warning that dismissal would result from his noncompliance with the court's
28 order.

1 Accordingly, the court HEREBY ORDERS that this action is DISMISSED based on
2 plaintiff's failure to obey the court's order of May 8, 2009 and for failure to state a claim upon which
3 relief may be granted. This dismissal shall count as a strike pursuant to 28 U.S.C. § 1915(g).

4 IT IS SO ORDERED.

5 Dated: March 9, 2010

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE

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