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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

GLORIA PALACIOS,	)	1:09cv0554 OWW DLB
	)	
	)	
Plaintiff,	)	FINDINGS AND RECOMMENDATION
	)	REGARDING DISMISSAL OF ACTION
v.	)	
	)	
FRESNO COUNTY SUPERIOR COURT,	)	
et al.,	)	
	)	
	)	
Defendants.	)	

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Plaintiff Gloria Palacios (“Plaintiff”), appearing pro se, filed the instant civil rights action on March 25, 2009. On October 21, 2009, as part of the Court’s Findings and Recommendation regarding dismissal of certain causes of action and certain defendants, the Court granted Plaintiff leave to amend her 42 U.S.C. § 1983 claim. The amended complaint was due within thirty (30) days of the date of service of the order. Over thirty (30) days have passed and Plaintiff has not filed an amended complaint or otherwise communicated with the Court.

**DISCUSSION**

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

1 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's  
2 failure to prosecute an action, failure to obey a court order, or failure to comply with local rules.  
3 See, e.g. Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with  
4 local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to  
5 comply with an order requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-41  
6 (9th Cir. 1988)(dismissal for failure to comply with local rule requiring pro se plaintiffs to keep  
7 court apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir.  
8 1987)(dismissal for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421,  
9 1424 (9th Cir. 1986)(dismissal for failure to lack of prosecution and failure to comply with local  
10 rules).

11 In determining whether to dismiss an action for lack of prosecution, failure to obey a court  
12 order, or failure to comply with local rules, the court must consider several factors: (1) the  
13 public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket;  
14 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on  
15 their merits; and, (5) the availability of less drastic alternatives. Thompson, 782 F.2d at 831;  
16 Henderson, 779 F.2d at 1423-24; Malone, 833 F.2d at 130; Ferdik, 963 F.2d at 1260-61; Ghazali,  
17 46 F.3d at 53.

18 In the instant case, the Court finds that the public's interest in expeditiously resolving this  
19 litigation and the court's interest in managing the docket weigh in favor of dismissal. This case  
20 has been pending since March 25, 2009. The third factor, risk of prejudice to defendants, also  
21 weighs in favor of dismissal, since a presumption of injury arises from the occurrence of  
22 unreasonable delay in prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir.  
23 1976). The fourth factor -- public policy favoring disposition of cases on their merits -- is greatly  
24 outweighed by the factors in favor of dismissal discussed herein. Finally, a court's warning to a  
25 party that his failure to obey the court's order will result in dismissal satisfies the "consideration of  
26 alternatives" requirement. Ferdik v. Bonzelet, 963 F.2d at 1262; Malone, 833 at 132-33;  
27 Henderson, 779 F.2d at 1424. The Court's Findings and Recommendation stated that failure to  
28 comply with the terms would result in a recommendation that the action be dismissed. Moreover,

1 Plaintiff has been given numerous opportunities to amend and in each instance, she was warned  
2 that failure to file an amended complaint within the specified time frame would result in a  
3 recommendation that her action be dismissed. Thus, Plaintiff had adequate warning that dismissal  
4 would result from non-compliance with the Court's order(s).

5 RECOMMENDATION

6 Accordingly, the Court RECOMMENDS that the action be dismissed for Plaintiff's failure  
7 to follow the Court's orders.

8 These Findings and Recommendations are submitted to the Honorable Oliver W. Wanger,  
9 United States District Court Judge, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and  
10 Rule 72-304 of the Local Rules of Practice for the United States District Court, Eastern District  
11 of California. Within thirty (30) days after being served with a copy, any party may file written  
12 objections with the court and serve a copy on all parties. Such a document should be captioned  
13 "Objections to Magistrate Judge's Findings and Recommendations." Replies to the objections  
14 shall be served and filed within ten (10) court days (plus three days if served by mail) after service  
15 of the objections. The Court will then review the Magistrate Judge's ruling pursuant to 28 U.S.C.  
16 § 636 (b)(1)(C). The parties are advised that failure to file objections within the specified time  
17 may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th  
18 Cir. 1991).

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21 IT IS SO ORDERED.

22 **Dated: December 1, 2009**

**/s/ Dennis L. Beck**  
23 UNITED STATES MAGISTRATE JUDGE  
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