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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JOHN D. HORTON,)	1:09-cv-01364 OWW GSA
)	
Plaintiff,)	FINDINGS AND RECOMMENDATIONS
)	REGARDING DISMISSAL OF THE CASE
v.)	FOR FAILURE TO OBEY COURT ORDER
)	
SERVICE EMPLOYEES)	(Document 5)
INTERNATIONAL UNION,)	
)	
Defendant.)	

Plaintiff John D. Horton, appearing pro se and proceeding in forma pauperis, filed a complaint on March 5, 2009, seeking to challenge the Service Employees International Union (SEIU)'s representation of his interests in an administrative proceeding before the California State Personnel Board, concerning his employment with the State of California. (Doc. 1.) On September 4, 2009, this Court issued an Order Dismissing the Complaint with Leave to Amend, finding Plaintiff had failed to state cognizable claims. Plaintiff was provided thirty (30) days within which to file his amended complaint. (Doc. 5.) 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

1 power to control their dockets and “in the exercise of that power, they may impose sanctions
2 including, where appropriate . . . dismissal of a case.” *Thompson v. Housing Auth.*, 782 F.2d
3 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s
4 failure to prosecute an action, failure to obey a court order, or failure to comply with local rules.
5 *See, e.g. Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with
6 local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to
7 comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-
8 41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring pro se plaintiffs to
9 keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987)
10 (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424
11 (9th Cir. 1986) (dismissal for failure to lack of prosecution and failure to comply with local
12 rules). In determining whether to dismiss an action for lack of prosecution, failure to obey a
13 court order, or failure to comply with local rules, the Court must consider several factors: (1) the
14 public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket;
15 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on
16 their merits; and (5) the availability of less drastic alternatives. *Thompson*, 782 F.2d at 831;
17 *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61;
18 *Ghazali*, 46 F.3d at 53.

19 In the instant case, the Court finds that the public’s interest in expeditiously resolving this
20 litigation and the Court’s interest in managing the docket weigh in favor of dismissal, as this case
21 has been pending since March 5, 2009. The third factor, risk of prejudice to defendants, also
22 weighs in favor of dismissal, since a presumption of injury arises from the occurrence of
23 unreasonable delay in prosecuting an action. *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir.
24 1976). The fourth factor -- public policy favoring disposition of cases on their merits -- is greatly
25 outweighed by the factors in favor of dismissal discussed herein.

26 Finally, a court’s warning to a party that his failure to obey the Court’s order will result in
27 dismissal satisfies the “consideration of alternatives” requirement. *Ferdik v. Bonzelet*, 963 F.2d
28 at 1262; *Malone*, 833 at 132-33; *Henderson*, 779 F.2d at 1424. The Court’s order requiring

1 Plaintiff to amend his complaint expressly stated: "If Plaintiff fails to file a first amended
2 complaint, the Court will recommend that this action be dismissed for failure to follow a court
3 order." (Doc. 5 at 6.) Thus, Plaintiff had adequate warning that dismissal would result from his
4 noncompliance with the Court's order.

5 Accordingly, the Court RECOMMENDS that this action be dismissed without prejudice
6 based on Plaintiff's failure to obey the Court's order of September 4, 2009.

7 These findings and recommendations are submitted to Oliver W. Wanger, United States
8 District Judge, pursuant to the provisions of Title 28 of the United States Code section 636(b)(1).
9 Within thirty (30) days after being served with these findings and recommendations, Plaintiff
10 may file written objections with the Court. Such a document should be captioned "Objections to
11 Magistrate Judge's Findings and Recommendations." The parties are advised that failure to file
12 objections within the specified time may waive the right to appeal the District Court's order.
13 *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

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17 IT IS SO ORDERED.

18 **Dated: October 8, 2009**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

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