

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

PASQUAL APARICIO,

Plaintiff,

v.

KEN CLARK, et al.,

Defendants.

CASE NO. 1:09-CV-01783-DLB PC

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

(DOC. 14)

_____/

Plaintiff Pasqual Aparicio (“Plaintiff”) is a California state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed his complaint on October 9, 2009. Doc. 1. On September 20, 2010, the Court dismissed Plaintiff’s complaint for failure to state a claim with leave to file an amended complaint within thirty days. Doc. 6. Plaintiff received an extension of time on June 6, 2011, and August 4, 2011. Docs. 11, 13. Plaintiff was granted up to and including September 6, 2011 in which to file his amended complaint. On October 13, 2011, Plaintiff was ordered to show cause within eighteen days why this action should not be dismissed for failure to obey a court order and failure to state a claim. Doc. 14. As of the date of this order, Plaintiff has not responded or otherwise complied.

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

1 an 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*
3 *v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an
4 order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir.
5 1988)(dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court
6 apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987)(dismissal
7 for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir.
8 1986)(dismissal for failure to lack of prosecution and failure to comply with local rules).

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

16 In the instant case, the court finds that the public's interest in expeditiously resolving this
17 litigation and the court's interest in managing the docket weigh in favor of dismissal. On July 7,
18 2011, Plaintiff was ordered to file a signed complaint, but failed to do so. The third factor, risk
19 of prejudice to defendants, also weighs in favor of dismissal, since a presumption of injury arises
20 from the occurrence of unreasonable delay in prosecuting an action. *Anderson v. Air West*, 542
21 F.2d 522, 524 (9th Cir. 1976). The fourth factor -- public policy favoring disposition of cases on
22 their merits -- is greatly outweighed by the factors in favor of dismissal discussed herein. Finally,
23 a court's warning to a party that his failure to obey the court's order will result in dismissal
24 satisfies the "consideration of alternatives" requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833
25 F.2d at 132-33; *Henderson*, 779 F.2d at 1424. The court's order expressly stated: "Failure to
26 timely respond or to show cause will result in dismissal of this action for failure to obey a court
27 order and failure to state a claim. Thus, Plaintiff had adequate warning that dismissal would
28 result from his noncompliance with the Court's order.

1 Accordingly, it is HEREBY ORDERED that

2 1. This action is DISMISSED for failure to obey the Court's October 13, 2011 Order
3 and for failure to state a claim;

4 2. This dismissal is subject to the three strikes provision of 28 U.S.C. § 1915(g).
5 *Silva v. Vittorio*, No. 08-15620, 2011 WL 4436248, at *4 (9th Cir. Sept. 26,
6 2011); and

7 3. The Clerk of the Court is directed to close this action.

8 IT IS SO ORDERED.

9 **Dated: November 17, 2011**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28