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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RICHARD A. HICKS,  
  
Plaintiff,  
  
vs.  
  
MICHAEL J. ASTRUE,  
Commissioner of Social  
Security,  
  
Defendant. \_\_\_\_\_/

1:10-cv-00515-SMS

**ORDER DISMISSING ENTIRE  
ACTION FOR PLAINTIFF'S  
FAILURE TO COMPLY WITH  
COURT ORDER AND FAILURE  
TO PROSECUTE  
(Doc. 24)**  
  
**ORDER DIRECTING CLERK TO  
ENTER JUDGMENT AND  
ADMINISTRATIVELY CLOSE CASE**

Plaintiff is proceeding pro se and in forma pauperis with this action seeking judicial review of a final decision of the Commissioner of Social Security that denied, in whole or in part, his claim for benefits under the Social Security Act. Pursuant to the consent of the parties (Docs. 8 & 10), and 28 U.S.C. § 636(c), Fed. R. Civ. P. 73(b), and Local Rule 301, the matter has been referred to the Magistrate Judge to conduct all further proceedings, including the entry of a final judgment.

On May 12, 2011, plaintiff was ordered to file his opening brief by June 13, 2011, with or without the assistance of counsel, utilizing specific guidelines provided therein. Plaintiff was also advised that failure to timely file his opening brief would result in outright dismissal of this entire action. To date, plaintiff has not filed his opening brief or otherwise contacted the Court.

1 Local Rule 110 provides that "...failure of counsel or of a  
2 party to comply with these Local Rules or with any order of the  
3 Court may be grounds for the imposition by the Court of any and  
4 all sanctions...within the inherent power of the Court."  
5 District courts have the inherent power to control their dockets  
6 and "in the exercise of that power, they may impose sanctions  
7 including, where appropriate...dismissal of a case." Thompson v.  
8 Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may  
9 dismiss an action, with prejudice, based on a party's failure to  
10 prosecute an action, failure to obey a court order, or failure to  
11 comply with local rules. See, e.g. Ghazali v. Moran, 46 F.3d 52,  
12 53-54 (9th Cir. 1995) (dismissal for noncompliance with local  
13 rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)  
14 (dismissal for failure to comply with an order requiring  
15 amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-41  
16 (9th Cir. 1988) (dismissal for failure to comply with local rule  
17 requiring pro se plaintiffs to keep court apprised of address);  
18 Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987)  
19 (dismissal for failure to comply with court order); Henderson v.  
20 Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for  
21 failure to lack of prosecution and failure to comply with local  
22 rules).

23 In determining whether to dismiss an action for lack of  
24 prosecution, failure to obey a court order, or failure to comply  
25 with local rules, the court must consider several factors: (1)  
26 the public's interest in expeditious resolution of litigation;  
27 (2) the court's need to manage its docket; (3) the risk of  
28 prejudice to the defendants; (4) the public policy favoring

1 disposition of cases on their merits; and, (5) the availability  
2 of less drastic alternatives. Thompson, 782 F.2d at 831;  
3 Henderson, 779 F.2d at 1423-24; Malone, 833 F.2d at 130; Ferdik,  
4 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

5 In this case, the Court finds that the public's interest in  
6 expeditiously resolving this litigation and the Court's interest  
7 in managing the docket weigh in favor of dismissal. The third  
8 factor, risk of prejudice to defendants, also weighs in favor of  
9 dismissal, since a presumption of injury arises from the  
10 occurrence of unreasonable delay in prosecuting an action.

11 Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The  
12 fourth factor, public policy favoring disposition of cases on  
13 their merits, is greatly outweighed by the factors in favor of  
14 dismissal discussed herein. Finally, a court's warning to a  
15 party that failure to obey the court's order may result in  
16 dismissal satisfies the "consideration of alternatives"  
17 requirement. Ferdik v. Bonzelet, 963 F.2d at 1262; Malone, 833  
18 at 132-33; Henderson, 779 F.2d at 1424.

19 Accordingly, it is HEREBY ORDERED that:

20 1. This action is DISMISSED in its entirety for  
21 plaintiff's failure to comply with an order of the Court and for  
22 failure to prosecute; and,

23 2. The Clerk is DIRECTED to enter judgment and  
24 administratively close the case.

25 IT IS SO ORDERED.

26 **Dated: June 17, 2011**

**/s/ Sandra M. Snyder**  
UNITED STATES MAGISTRATE JUDGE