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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JEROME A. PORTER-BEY,

1:10-cv-0834-LJO-MJS (PC)

Plaintiff,

FINDINGS AND RECOMMENDATIONS
FOR DISMISSAL OF PLAINTIFF'S
COMPLAINT FOR FAILURE TO STATE
A CLAIM AND TO OBEY A COURT
ORDER

v.

J. CUIFO, et al.,

(ECF No. 20)

Defendants.

OBJECTIONS DUE WITHIN
FOURTEEN DAYS

Plaintiff Jerome A. Porter-Bey ("Plaintiff"), a former federal prisoner proceeding pro se and in forma pauperis, filed this civil action on May 3, 2010, pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), which provides a remedy for the violation of civil rights by federal actors.

On July 3, 2012, the Court issued an Order to Show Cause, ordering Plaintiff to file an amended complaint by July 19, 2012. (ECF No. 20.) In the alternative, Plaintiff was to show cause why his case should not be dismissed for failure to comply with a court order and failure to state a claim. (Id.) July 19, 2012, has passed without Plaintiff complying with or otherwise responding to the Court's Order.

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

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

1 In the instant case, the Court finds that the public's interest in expeditiously
2 resolving this litigation and the Court's interest in managing its docket weigh in favor of
3 dismissal. The third factor, risk of prejudice to defendants, also weighs in favor of
4 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
5 in prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The
6 fourth factor -- public policy favoring disposition of cases on their merits -- is greatly
7 outweighed by the factors in favor of dismissal discussed herein. Finally, a court's
8 warning to a party that his failure to obey the court's order will result in dismissal satisfies
9 the "consideration of alternatives" requirement. Ferdik v. Bonzelet, 963 F.2d at 1262;
10 Malone, 833 at 132-33; Henderson, 779 F.2d at 1424. The Court's Order expressly
11 stated: "Failure to meet this deadline will result in dismissal of this action." (ECF No. 20.)
12 Thus, Plaintiff had adequate warning that dismissal would result from his noncompliance
13 with the Court's Order.

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16 Accordingly, pursuant to 28 U.S.C. § 1915A and 28 U.S.C. § 1915(e), the Court
17 hereby RECOMMENDS that this action be DISMISSED, with prejudice, based on
18 Plaintiff's failure to state a claim upon which relief may be granted under § 1983 and
19 failure to obey the Court's July 3, 2012, Order (ECF No. 20). This dismissal is subject to
20 the "three-strikes" provision set forth in 28 U.S.C. § 1915(g). Silva v. Vittorio, 658 F.3d
21 1090, 1098-1099 (9th Cir. 2011).

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23 These Findings and Recommendations are submitted to the United States District
24 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).
25 Within fourteen (14) days after being served with these Findings and Recommendations,
26 any party may file written objections with the Court and serve a copy on all parties. Such
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1 a document should be captioned "Objections to Magistrate Judge's Findings and
2 Recommendations." Any reply to the objections shall be served and filed within ten days
3 after service of the objections. The parties are advised that failure to file objections within
4 the specified time may waive the right to appeal the District Court's order. Martinez v. Y1
5 st, 951 F.2d 1153 (9th Cir. 1991).
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8 IT IS SO ORDERED.

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10 Dated: August 20, 2012

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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