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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER CARREA,

Plaintiff,

v.

STATE OF CALIFORNIA, et al.,

Defendants.

) 1:10-cv-01004 OWW GSA

) **FINDINGS AND RECOMMENDATIONS**
) **REGARDING PLAINTIFF’S FAILURE**
) **TO FOLLOW A COURT ORDER**

On June 4, 2010, Plaintiff Christopher Carrea, appearing pro se and proceeding in forma pauperis, filed a complaint against multiple government entities and professionals for personal injuries. (Doc. 1.)

On November 10, 2010, this Court issued an Order dismissing Plaintiff’s complaint for several reasons including a failure to state a cognizable claim, and granting Plaintiff thirty days within which to file an amended complaint, addressing the deficiencies identified therein. (Doc. 6.) As of this date, a First Amended Complaint has not been filed with the Court.

1 **DISCUSSION**

2 Local Rule 110 provides that “[f]ailure of counsel or of a party to comply with these
3 Rules or with any order of the Court may be grounds for imposition by the Court of any and all
4 sanctions . . . within the inherent power of the Court.” District courts have the inherent power to
5 control their dockets and “in the exercise of that power, they may impose sanctions including,
6 where appropriate . . . dismissal of a case.” *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th
7 Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute
8 an action, failure to obey a court order, or failure to comply with local rules. *See, e.g. Ghazali v.*
9 *Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik*
10 *v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an
11 order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir.
12 1988) (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) (dismissal
14 for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir.
15 1986) (dismissal for failure to lack of prosecution and failure to comply with local rules). In
16 determining whether to dismiss an action for lack of prosecution, failure to obey a court order, or
17 failure to comply with local rules, the Court must consider several factors: (1) the public’s
18 interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket; (3) the
19 risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their
20 merits; and (5) the availability of less drastic alternatives. *Thompson*, 782 F.2d at 831;
21 *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61;
22 *Ghazali*, 46 F.3d at 53.

23 In the instant case, the Court finds that the public’s interest in expeditiously resolving this
24 litigation and the Court’s interest in managing the docket weigh in favor of dismissal, as this case
25 has been pending since June 4, 2010, and there is no indication that Plaintiff intends to prosecute
26 this action. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal,
27

1 since a presumption of injury arises from the occurrence of unreasonable delay in prosecuting an
2 action. *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor -- public
3 policy favoring disposition of cases on their merits -- is greatly outweighed by the factors in favor
4 of dismissal discussed herein.

5 Finally, a court's warning to a party that his failure to obey the Court's order will result in
6 dismissal satisfies the "consideration of alternatives" requirement. *Ferdik v. Bonzelet*, 963 F.2d
7 at 1262; *Malone*, 833 at 132-33; *Henderson*, 779 F.2d at 1424. The November 10, 2010, order
8 requiring Plaintiff to amend his complaint expressly stated: "If Plaintiff fails to file a first
9 amended complaint, the Court will recommend that this action be dismissed for a failure to
10 follow a court order." (Doc. 6 at 14.) Thus, Plaintiff has had adequate warning that dismissal
11 would result from noncompliance with the Court's order.

12 **RECOMMENDATIONS**

13 Accordingly, the Court HEREBY RECOMMENDS that this action be DISMISSED for
14 Plaintiff's failure to comply with a court order.

15 This Findings and Recommendations are submitted to the Honorable Oliver W. Wanger,
16 United States District Court Judge, pursuant to the provisions of Title 28 of the United States
17 Code section 636 (b)(1)(B). Within thirty (30) days after being served with a copy, Plaintiff may
18 file written objections with the Court. Such a document should be captioned "Objections to
19 Magistrate Judge's Findings and Recommendation." The Court will then review the Magistrate
20 Judge's ruling pursuant to Title 28 of the United States Code section 636(b)(1)(C). Plaintiff is
21 advised that failure to file objections within the specified time may waive the right to appeal the
22 District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

23
24 IT IS SO ORDERED.

25 **Dated: December 15, 2010**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE