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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARTIN D. MILLER,)	1:10-cv-01173-OWW-JLT HC
)	
)	FINDINGS AND RECOMMENDATIONS TO
Petitioner,)	DISMISS PETITION FOR WRIT OF
)	HABEAS CORPUS (Doc. 1)
)	
v.)	ORDER DIRECTING THAT OBJECTIONS
)	BE FILED WITHIN TWENTY DAYS
L. S. McEWEN, Warden,)	
)	
Respondent.)	

Petitioner is a state prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

DISCUSSION

On June 17, 2010, Petitioner filed the instant habeas petition in the Sacramento Division of this Court. (Doc. 1). On June 29, 2010, the case was transferred to the Fresno Division. (Doc. 3). On July 23, 2010, the Court issued an order requiring Petitioner to amend his petition within thirty days of the date of service of the order to amend. (Doc. 9). More than the thirty-day period has passed, and Petitioner has failed to comply with, or otherwise respond to, the Court's order.

In determining whether to dismiss an action for lack of prosecution, the court must consider

1 several factors: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to
2 manage its docket; (3) the risk of prejudice to the Respondents; (4) the public policy favoring
3 disposition of cases on their merits; and, (5) the availability of less drastic alternatives. Henderson v.
4 Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856 F.2d 1439 (9th Cir. 1988).

5 The Court finds that the public’s interest in expeditiously resolving this litigation and the
6 Court’s interest in managing the docket weigh in favor of dismissal, as this case has been pending
7 since June 17, 2010. The third factor, risk of prejudice to Respondent, also weighs in favor of
8 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay in
9 prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor --
10 public policy favoring disposition of cases on their merits -- is greatly outweighed by the factors in
11 favor of dismissal discussed herein. Finally, a court’s warning to a party that failure to obey the
12 court’s order will result in dismissal satisfies the “consideration of alternatives” requirement. Ferdik
13 v. Bonzelet, 963 F.2d at 1262; Malone, 833 at 132-33; Henderson, 779 F.2d at 1424. The Court’s
14 order of July 23, 2010, expressly stated: “Petitioner is forewarned that his failure to comply with this
15 order may result in a Recommendation that the petition be dismissed pursuant to Local Rule 110.”
16 (Doc. 9, p. 4). Thus, Petitioner had adequate warning that dismissal would result from his
17 noncompliance with the Court’s order.

18 **RECOMMENDATION**

19 Accordingly, the Court HEREBY RECOMMENDS that the petition for writ of
20 habeas corpus (Doc. 1), be DISMISSED for Petitioner's failure to prosecute.

21 This Findings and Recommendation is submitted to the United States District Court Judge
22 assigned to the case pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the
23 Local Rules of Practice for the United States District Court, Eastern District of California. Within
24 twenty (20) days after being served with a copy, any party may file written objections with the Court
25 and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate
26 Judge’s Findings and Recommendations.” Replies to the objections shall be served and filed within
27 ten (10) court days (plus three days if served by mail) after service of the objections. The Court will
28 then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are

1 advised that failure to file objections within the specified time may waive the right to appeal the
2 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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4 IT IS SO ORDERED.

5 Dated: September 16, 2010

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

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