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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA – FRESNO DIVISION

TIMOTHY S. DAUBERT,

Plaintiff,

v.

CITY OF LINDSAY,

Defendant.

CASE NO. 1:10-cv-01430-AWI-SKO

**FINDINGS AND
RECOMMENDATIONS THAT
PLAINTIFF'S COMPLAINT BE
DISMISSED**

OBJECTIONS DUE: 20 DAYS

INTRODUCTION

On August 10, 2010, Plaintiff Timothy S. Daubert ("Plaintiff") filed a complaint against Defendant City of Lindsay ("Defendant") alleging generally that Defendant violated Title II of the Americans with Disabilities Act of 1990 ("ADA") and Section 504 of the Rehabilitation Act of 1973. (Doc. 1.) On November 22, 2010, the Court dismissed Plaintiff's complaint and granted 30 days leave to amend. (Doc. 5.) Plaintiff failed to file an amended complaint. On January 12, 2011, the Court issued an order allowing Plaintiff an additional 15 days to file an amended complaint, specifically advising Plaintiff that failure to file an amended complaint would result in a recommendation of dismissal. Plaintiff did not file an amended complaint.

1 **DISCUSSION**

2 Local Rule 110 provides that "[f]ailure of counsel or of a party to comply with these Rules
3 or with any order of the Court may be grounds for the 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 "[i]n the exercise of that power they may impose sanctions, including,
6 where appropriate . . . dismissal." *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th Cir. 1986).
7 A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action,
8 failure to obey a court order, or failure to comply with local rules. *See, e.g., Ghazali v. Moran*,
9 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*,
10 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring
11 amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for
12 failure to comply with local rule requiring pro se plaintiff to keep court apprised of address); *Malone*
13 *v. U.S. Postal Service*, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to comply with
14 court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to
15 prosecute and failure to comply with local rules).

16 In determining whether to dismiss an action for lack of prosecution, failure to obey a court
17 order, or 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 risk
19 of prejudice to the defendant; (4) the public policy favoring disposition of cases on their merits; and
20 (5) the availability of less drastic alternatives. *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at
21 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

22 In the instant case, the Court finds that the public's interest in expeditiously resolving this
23 litigation and the Court's interest in managing the docket weigh in favor of dismissal. The third
24 factor, risk of prejudice to defendants, also weighs in favor of dismissal, since a presumption of
25 injury arises from the occurrence of unreasonable delay in prosecuting an action. *Anderson v. Air*
26 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor – public policy favoring disposition of
27 cases on their merits – is greatly outweighed by the factors in favor of dismissal discussed herein.
28 Finally, a court's warning to a party that his failure to obey the court's order will result in dismissal

1 satisfies the "consideration of alternatives" requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d
2 at 132-33; *Henderson*, 779 F.2d at 1424. The Court's January 12, 2011, order expressly stated that
3 failure to amend the complaint would "result in a recommendation of dismissal." (Doc. 6.) Thus,
4 Plaintiff had adequate warning that dismissal would result from his noncompliance with the Court's
5 order.

6 **CONCLUSION AND RECOMMENDATION**

7 The Court HEREBY RECOMMENDS that the Complaint be DISMISSED pursuant to Local
8 Rule 110, for Plaintiff's failure to obey the Court's Orders of November 22, 2010, and January 12,
9 2011.

10 These findings and recommendations are submitted to the district judge assigned to this
11 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within twenty (20)
12 days of service of this recommendation, any party may file written objections to these findings and
13 recommendations with the Court and serve a copy on all parties. Such a document should be
14 captioned "Objections to Magistrate Judge's Findings and Recommendations." The district judge
15 will review the magistrate judge's findings and recommendations pursuant to 28 U.S.C.
16 § 636(b)(1)(C). The parties are advised that failure to file objections within the specified time may
17 waive the right to appeal the district judge's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

18
19 IT IS SO ORDERED.

20 **Dated:** February 2, 2011

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE