

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

WAYNE ELDERWIN NEWSON,)	1:10cv01491 OWW DLB
)	
)	
Plaintiff,)	FINDINGS AND RECOMMENDATION
)	REGARDING DISMISSAL OF ACTION
v.)	
)	
TODD SCHAFFER,)	
)	
)	
Defendant.)	

Plaintiff Wayne Elderwin Newson (“Plaintiff”), appearing pro se and proceeding in forma pauperis, filed the instant action on August 18, 2010. On August 24, 2010, the Court dismissed Plaintiff’s complaint with leave to amend. Plaintiff was informed that an amended complaint must be filed within thirty (30) days of the date of service of the order, and that the Court would recommend that the action be dismissed if he did not file an amended complaint. Over thirty (30) days have passed and Plaintiff has not filed an amended complaint or otherwise contacted the Court.

DISCUSSION

Local Rule 110 provides that “failure of counsel or of a party to comply with these Local Rules or with any order of the Court may be grounds for the imposition by the Court of any and all sanctions . . . within the inherent power of the Court.” District courts have the inherent power to control their dockets and “[i]n the exercise of that power they may impose sanctions including,

1 where appropriate, . . . dismissal.” Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir.
2 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an
3 action, failure to obey a court order, or failure to comply with local rules. See, e.g. Ghazali v.
4 Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik
5 v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an
6 order requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir.
7 1988) (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court
8 apprised of address); Malone v. United States Postal Serv., 833 F.2d 128, 130 (9th Cir. 1987)
9 (dismissal for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421, 1424
10 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

11 In determining whether to dismiss an action for lack of prosecution, failure to obey a
12 court order, or failure to comply with local rules, the court must consider several factors: (1) the
13 public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket;
14 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on
15 their merits; and (5) the availability of less drastic alternatives. Thompson, 782 F.2d at 831;
16 Henderson, 779 F.2d at 1423-24; Malone, 833 F.2d at 130; Ferdik, 963 F.2d at 1260-61; Ghazali,
17 46 F.3d at 53.

18 In the instant case, the Court finds that the public’s interest in expeditiously resolving this
19 litigation and the Court’s interest in managing the docket weigh in favor of dismissal, as this case
20 has been pending since August 18, 2010, and Plaintiff has failed to correct the deficiencies in his
21 complaint. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal,
22 since a presumption of injury arises from the occurrence of unreasonable delay in prosecuting an
23 action. Anderson v. Air West, Inc., 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor --
24 public policy favoring disposition of cases on their merits -- is greatly outweighed by the factors
25 in favor of dismissal discussed herein. Finally, a court’s warning to a party that his failure to
26 obey the court’s order will result in dismissal satisfies the “consideration of alternatives”
27 requirement. Ferdik, 963 F.2d at 1262; Malone, 833 at 132-33; Henderson, 779 F.2d at 1424.
28 The Court’s August 24, 2010, order requiring Plaintiff to file an amended complaint expressly

1 stated that if he did not comply, the Court would recommend that this action be dismissed. Thus,
2 Plaintiff had adequate warning that dismissal would result from his noncompliance with the
3 Court's order.

4 **RECOMMENDATION**

5 Accordingly, the Court HEREBY RECOMMENDS that this action be DISMISSED for
6 failure to follow a court order.

7 These findings and recommendations will be submitted to the Honorable Oliver W.
8 Wanger, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30) days after
9 being served with these Findings and Recommendations, Plaintiff may file written objections
10 with the Court. The document should be captioned "Objections to Magistrate Judge's Findings
11 and Recommendations." Plaintiff is advised that failure to file objections within the specified
12 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153
13 (9th Cir. 1991).

14
15 IT IS SO ORDERED.

16 Dated: October 5, 2010

17 /s/ Dennis L. Beck
18 UNITED STATES MAGISTRATE JUDGE
19
20
21
22
23
24
25
26
27
28