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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GREGORIO FUNTANILLA, JR.,)	1:10-CV-01624 LJO DLB PC
Plaintiff,)	FINDINGS AND RECOMMENDATION TO
vs.)	DISMISS ACTION FOR FAILURE TO
ROMAN W. WILLIAMS, et al.,)	COMPLY WITH A COURT ORDER
Defendants.)	(FOURTEEN DAY DEADLINE)

Plaintiff Gregorio Funtanilla, Jr., (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983.

On August 27, 2014, the Court issued a discovery and scheduling order. Among other things, the order required Plaintiff and Defendants to provide initial disclosures on or before October 13, 2014. On October 13, 2014, Defendants provided Plaintiff with their initial disclosures and filed Defendants’ statement of initial disclosures. On November 25, 2014, Defendants moved to modify the scheduling order because Plaintiff had failed to provide Defendants with his initial disclosures as ordered by the Court. On December 9, 2014, the Court issued an order directing Plaintiff to show cause within fourteen days why the action should not be dismissed for failure to comply with a court order. Over fourteen days have passed and Plaintiff has failed to comply or otherwise respond to the court order.

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

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

25 In the instant case, the Court finds that the public’s interest in expeditiously resolving this
26 litigation and the Court’s interest in managing the docket weigh in favor of dismissal. The third
27 factor, risk of prejudice to defendants, also weighs in favor of dismissal, since a presumption of
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1 injury arises from the occurrence of unreasonable delay in prosecuting an action. Anderson v.
2 Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor -- public policy favoring
3 disposition of cases on their merits -- is greatly outweighed by the factors in favor of dismissal
4 discussed herein. Finally, a court's warning to a party that his failure to obey the court's order
5 will result in dismissal satisfies the "consideration of alternatives" requirement. Ferdik v.
6 Bonzelet, 963 F.2d at 1262; Malone, 833 at 132-33; Henderson, 779 F.2d at 1424. The Court's
7 order expressly stated: "Failure to show cause, or failure to respond to this order, may result in
8 dismissal of this action." Thus, Plaintiff had adequate warning that dismissal would result from
9 his noncompliance with the Court's order.
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11 RECOMMENDATION

12 Accordingly, the Court HEREBY RECOMMENDS that this action be dismissed based
13 on Plaintiff's failure to obey the Court's orders of August 27, 2014, and December 9, 2014.

14 These Findings and Recommendations are submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen
16 (14) days after date of service of these Findings and Recommendations, Plaintiff may file written
17 objections with the Court. Such a document should be captioned "Objections to Magistrate
18 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections
19 within the specified time may waive the right to appeal the District Court's order. Martinez v.
20 Ylst, 951 F.2d 1153 (9th Cir. 1991).
21

22 IT IS SO ORDERED.

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24 Dated: January 16, 2015

/s/ Dennis L. Beck
25 UNITED STATES MAGISTRATE JUDGE
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