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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SONYA MARIE LESCUEER,

1:10-cv-01919-OWW-DLB (HC)

Petitioner,

FINDINGS AND RECOMMENDATION
RECOMMENDING DISMISSAL OF
PETITION FOR FAILURE TO COMPLY
WITH A COURT ORDER

v.

FRESNO CITY,

[Doc. 4]

Respondent.

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

Petitioner filed the instant petition for writ of habeas corpus on October 14, 2010. On October 22, 2010, the Court dismissed the petition with leave to amend. Petitioner has failed to file an amended petition or otherwise responded to the order.

Local Rule 110 provides that a “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 “in the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal of a case.” Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)(dismissal for noncompliance with

1 local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to
2 comply with an order requiring amendment of complaint); Malone v. U.S. Postal Service, 833
3 F.2d 128, 130 (9th Cir. 1987)(dismissal for failure to comply with court order).

4 In determining whether to dismiss an action for lack of prosecution, the Court must
5 consider several factors: (1) the public's interest in expeditious resolution of litigation; (2) the
6 Court's need to manage its docket; (3) the risk of prejudice to the Respondents; (4) the public
7 policy favoring disposition of cases on their merits; and, (5) the availability of less drastic
8 alternatives. Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856
9 F.2d 1439 (9th Cir. 1988). The Court finds that the public's interest in expeditiously resolving
10 this litigation and the court's interest in managing the docket weigh in favor of dismissal, as this
11 case has been pending since October 14, 2010. The Court cannot hold this case in abeyance
12 indefinitely awaiting compliance by Petitioner. The third factor, risk of prejudice to
13 Respondents, also weighs in favor of dismissal, since a presumption of injury arises from the
14 occurrence of unreasonable delay in prosecuting an action. Anderson v. Air West, 542 F.2d 522,
15 524 (9th Cir. 1976). The fourth factor -- public policy favoring disposition of cases on their
16 merits -- is greatly outweighed by the factors in favor of dismissal discussed herein. Finally,
17 given Petitioner's noncompliance with the Court's order, no lesser sanction is feasible.

18 Based on the foregoing, it is HEREBY RECOMMENDED that the instant petition for
19 writ of habeas corpus be DISMISSED.

20 This Findings and Recommendation is submitted to the assigned United States District
21 Court Judge, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304 of the
22 Local Rules of Practice for the United States District Court, Eastern District of California.

23 Within thirty (30) days after being served with a copy, any party may file written objections with
24 the court and serve a copy on all parties. Such a document should be captioned "Objections to
25 Magistrate Judge's Findings and Recommendation." Replies to the objections shall be served
26 and filed within fourteen (14) days after service of the objections. The Court will then review the
27 Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that

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

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5 IT IS SO ORDERED.

6 **Dated: December 8, 2010**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE

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