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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LAMAR SINGLETON, SR.,

Plaintiff,

v.

ELI LILLY CO.,

Defendant.

CASE NO. 1:10-cv-02019-AWI-SKO

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

OBJECTIONS DUE: 20 DAYS

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I. INTRODUCTION

On October 27, 2010, Plaintiff, LaMar Singleton, Sr. ("Plaintiff"), filed a complaint against Eli Lilly Co. ("Defendant"). Plaintiff claims that Defendant manufactured, marketed, and sold Zyprexa. Plaintiff claims that taking Zyprexa caused him to develop type 2 diabetes, obesity, and permanent nerve damage and pain to both his feet and hands. Plaintiff states that his claims arise under the Eighth and Fourteenth Amendments, and he seeks \$13,000,000 in damages.

On January 28, 2011, the Court dismissed Plaintiff's complaint and granted 30 days leave to amend. (Doc. 7.) Plaintiff failed to file an amended complaint.

II. DISCUSSION

Local Rule 110 provides that "[f]ailure of counsel or of a party to comply with these Rules or with any order of the Court may be grounds for the imposition by the Court of any and all

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

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

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

1 The Court's January 28, 2011, order expressly stated that failure to amend the complaint
2 would result in a recommendation "that the entire action be dismissed" (Doc. 7.) Thus,
3 Plaintiff had adequate warning that dismissal would result from his noncompliance with the Court's
4 order.

5 **III. CONCLUSION AND RECOMMENDATION**

6 Accordingly, the Court HEREBY RECOMMENDS that the Complaint be DISMISSED
7 pursuant to Local Rule 110, for Plaintiff's failure to obey the Court's January 28, 2011, order.

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

16
17 IT IS SO ORDERED.

18 **Dated: March 10, 2011**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE