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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

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9 GEORGE FIGUEROA, CASE NO. 1:10-CV-02032-DLB PC  
10 Plaintiff, ORDER DISMISSING ACTION FOR  
11 v. FAILURE TO OBEY COURT ORDER AND  
FAILURE TO STATE CLAIM  
12 CALIFORNIA OF CORRECTION HEALTH (DOC. 8)  
13 DEPARTMENT, et al., DISMISSAL COUNTS AS STRIKE  
14 Defendants. PURSUANT TO 28 U.S.C. § 1915(G)

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16 Plaintiff George Figueroa (“Plaintiff”) was formerly a prisoner in the custody of the  
17 California Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro  
18 se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed  
19 his complaint on November 1, 2010. On May 9, 2011, the Court dismissed Plaintiff’s complaint  
20 for failure to state a claim, with leave to amend within thirty days. On July 12, 2011, the Court  
21 issued an order to show cause why this action should not be dismissed for Plaintiff’s failure to  
22 obey a court order and failure to state a claim. Plaintiff was ordered to file a response within  
23 thirty days. As of the date of this order, Plaintiff has not filed an amended complaint or  
24 otherwise responded.

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

1 where appropriate . . . dismissal of a case.” *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th  
2 Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to  
3 prosecute an action, failure to obey a court order, or failure to comply with local rules. *See, e.g.*,  
4 *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995)(dismissal for noncompliance with local  
5 rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply  
6 with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th  
7 Cir. 1988)(dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court  
8 apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987)(dismissal  
9 for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir.  
10 1986)(dismissal for failure to 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;  
17 *Ghazali*, 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. The third  
20 factor, risk of prejudice to defendants, also weighs in favor of dismissal, since a presumption of  
21 injury arises from the occurrence of unreasonable delay in prosecuting an action. *Anderson v.*  
22 *Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor -- public policy favoring  
23 disposition of cases on their merits -- is greatly outweighed by the factors in favor of dismissal  
24 discussed herein. Finally, a court’s warning to a party that his failure to obey the court’s order  
25 will result in dismissal satisfies the “consideration of alternatives” requirement. *Ferdik*, 963  
26 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424. The court’s order  
27 expressly stated: “Failure to timely respond or to show cause will result in dismissal of this  
28 action for failure to obey a court order and failure to state a claim.” Thus, Plaintiff had adequate

1 warning that dismissal would result from his noncompliance with the court's order.

2 Based on the foregoing, it is HEREBY ORDERED that this action is dismissed for  
3 Plaintiff's failure to obey the Court's July 12, 2011 Order, and for failure to state a claim. This  
4 dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g).

5 IT IS SO ORDERED.

6 Dated: August 25, 2011

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