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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GERALD BENSON,)	1:11-cv-1321 GSA LJO
)	
Plaintiff,)	FINDINGS AND RECOMMENDATION
)	REGARDING PLAINTIFF’S FAILURE TO
v.)	FOLLOW A COURT ORDER
)	
)	
COMMISSIONER OF SOCIAL)	(Doc. No. 6)
SECURITY,)	
)	
Defendant.)	

On August 11, 2011, Plaintiff, Gerald Bensen, filed the instant action. Plaintiff appears to be challenging a denial of his application for social security benefits. Following a preliminary review of the complaint, on August 22, 2011, the undersigned issued an order dismissing the complaint because it failed to state a claim. (Doc. 6). However, Plaintiff was granted leave to file an amended complaint and he was advised that any amended complaint must be filed no later than **September 23, 2011**. To date, no amended complaint has been filed.

DISCUSSION

Local Rule 11-110 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

1 sanctions . . . within the inherent power of the Court.” District courts have the inherent power to
2 control their dockets and “in the exercise of that power, they may impose sanctions including, where
3 appropriate . . . dismissal of a case.” Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir.
4 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an
5 action, failure to obey a court order, or failure to comply with local rules. See, e.g., Ghazali v.
6 Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v.
7 Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order
8 requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988)
9 (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprized of
10 address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to
11 comply with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for
12 lack of prosecution and failure to comply with local rules). In determining whether to dismiss an
13 action for lack of prosecution, failure to obey a court order, or failure to comply with local rules, the
14 court must consider several factors: (1) the public’s interest in expeditious resolution of litigation;
15 (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
16 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
17 alternatives. Ghazali, 46 F.3d at 53; Ferdik, 963 F.2d at 1260-61; Malone, 833 F.2d at 130;
18 Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24.

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 the docket weigh in favor of dismissal because this
21 case has been pending in this Court since August 11, 2011, and it does not appear that Plaintiff can
22 cure the deficiencies in the complaint. The third factor, risk of prejudice to defendants, also weighs
23 in favor of dismissal because a presumption of injury arises from any unreasonable delay in
24 prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor,
25 public policy favoring disposition of cases on their merits, is greatly outweighed by the factors in
26 favor of dismissal. Finally, a court’s warning to a party that his failure to obey the court’s order will
27 result in dismissal satisfies the “consideration of alternatives” requirement. Ferdik, 963 F.2d at
28 1262; Malone, 833 at 132-33; Henderson, 779 F.2d at 1424. The Court’s order to file an amended

1 complaint was clear that dismissal would result from non-compliance with the Court's order. (Doc. 6
2 at pg. 6).

3 **RECOMMENDATION**

4 Accordingly, the Court HEREBY RECOMMENDS that this action be DISMISSED for
5 Plaintiff's failure to comply with a court order.

6 This Findings and Recommendation is submitted to the Honorable Lawrence J. O'Neill,
7 United States District Court Judge, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B).
8 Within thirty (30) days after being served with a copy, Plaintiff may file written objections with the
9 court and serve a copy on all parties. Such a document should be captioned "Objections to
10 Magistrate Judge's Findings and Recommendation." The Court will then review the Magistrate
11 Judge's ruling pursuant to 28 U.S.C. § 636(b)(1)(C). Plaintiff is advised that failure to file
12 objections within the specified time may waive the right to appeal the District Court's order.
13 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

14
15 IT IS SO ORDERED.

16 **Dated: September 30, 2011**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE