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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARVIN BERRIOS,
Plaintiff,
v.
J. BONDOC, et al.,
Defendants.

CASE NO. 1:11-cv-01435-LJO-MJS
FINDINGS AND RECOMMENDATIONS
THAT THIS ACTION BE DISMISSED FOR
FAILURE TO OBEY A COURT ORDER
(ECF Nos. 21 and 22)
OBJECTIONS DUE WITHIN FOURTEEN
DAYS

Plaintiff Marvin Berrios, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on August 26, 2011. (ECF No. 1.) The action proceeds on Plaintiff's First Amended Complaint (ECF No. 10) against Defendant J. Bondoc for deliberate indifference to a serious medical need in violation of the Eighth amendment. (ECF No. 11.)

The Courts' Second Scheduling Order directed the parties to file pretrial statements. (ECF No. 19.) Plaintiff was to file and serve his before June 10, 2014. (Id.) That deadline passed without Plaintiff filing a statement or requesting an extension of time to do so. On June 24, 2014, the Court issued an order requiring Plaintiff to show cause why his case should not be dismissed for failure to obey a court order. (ECF No. 21) During a telephonic pretrial conference the Court extended Plaintiff's deadline to

1 respond to the order to show cause to August 14, 2014. (ECF No. 22.) That deadline
2 also has passed without a response from Plaintiff.

3 Local Rule 110 provides that “failure of counsel or of a party to comply with these
4 Rules or with any order of the Court may be grounds for imposition by the Court of any
5 and all sanctions . . . within the inherent power of the Court.” District courts have the
6 inherent power to control their dockets and “in the exercise of that power, they may
7 impose sanctions including, where appropriate . . . dismissal [of a case].” Thompson v.
8 Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with
9 prejudice, based on a party’s failure to prosecute an action, failure to obey a court order,
10 or failure to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th
11 Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d
12 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring
13 amendment of a complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988)
14 (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court
15 apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987)
16 (dismissal for failure to comply with a court order); Henderson v. Duncan, 779 F.2d 1421,
17 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local
18 rules).

19 In determining whether to dismiss an action for lack of prosecution, failure to obey
20 a court order, or failure to comply with local rules, the Court must consider several
21 factors: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need
22 to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
23 favoring disposition of cases on their merits; and (5) the availability of less drastic
24 alternatives. Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone,
25 833 F.2d at 130; Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

26 In the instant case, the Court finds that the public’s interest in expeditiously
27 resolving this litigation and the Court’s interest in managing its docket weigh in favor of
28 dismissal. The third factor, risk of prejudice to defendants, also weighs in favor of

1 dismissal, since a presumption of injury arises from the occurrence of unreasonable
2 delay in prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976).
3 The fourth factor -- public policy favoring disposition of cases on their merits -- is greatly
4 outweighed by the factors in favor of dismissal discussed herein. Finally, a court's
5 warning to a party that his failure to obey the court's order will result in dismissal satisfies
6 the "consideration of alternatives" requirement. Ferdik, 963 F.2d at 1262; Malone, 833 at
7 132-33; Henderson, 779 F.2d at 1424. The Court's June 24, 2014 order expressly
8 stated that failure to respond would result in dismissal. (ECF No. 21.) Thus, Plaintiff had
9 adequate warning that dismissal would result from his noncompliance with the Court's
10 order.

11 Based on the foregoing, the Court HEREBY RECOMMENDS that this action be
12 DISMISSED based on Plaintiff's failure to obey a court order.

13 These Findings and Recommendations are submitted to the United States District
14 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).
15 Within fourteen (14) days after being served with these Findings and Recommendations,
16 any party may file written objections with the Court and serve a copy on all parties. Such
17 a document should be captioned "Objections to Magistrate Judge's Findings and
18 Recommendations." The parties are advised that failure to file objections within the
19 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst,
20 951 F.2d 1153, 1156 (9th Cir. 1991).

21
22 IT IS SO ORDERED.

23 Dated: August 28, 2014

24 /s/ Michael J. Seng
25 UNITED STATES MAGISTRATE JUDGE
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