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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

IMELDA CAPUTI,)	CASE No.: 1:11-cv-01579-AWI-BAM
)	
Plaintiff,)	FINDINGS AND RECOMMENDATION
)	REGARDING PLAINTIFF’S FAILURE TO
v.)	FOLLOW A COURT ORDER
)	
FRESNO COUNTY SUPERIOR COURT,)	
)	
Defendant.)	

Plaintiff Imelda Caputi (“Plaintiff”), proceeding pro se and in forma pauperis, has alleged claims against Defendant Fresno County Superior Court (“Defendant”), claiming wrongful termination, age discrimination and Title VII violations. On October 18, 2011, the Court dismissed Plaintiff’s claims for failure to state a claim for which relief could be granted. (Doc. 6.) The Court granted Plaintiff 30 days to file an amended complaint. *Id.* The deadline for filing the amended complaint was November 17, 2011. To date, Plaintiff has not complied with the Court’s order.

DISCUSSION

Local Rule 110 provides that a “[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 sanctions . . . within the inherent power of the Court.” District courts have the inherent power to

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

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 because there is
20 no indication that the Plaintiff intends to prosecute this action. The third factor, risk of prejudice to
21 defendants, also weighs in favor of dismissal because a presumption of injury arises from any
22 unreasonable delay in prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir.
23 1976). The fourth factor, public policy favoring disposition of cases on their merits, is greatly
24 outweighed by the factors in favor of dismissal. Finally, a court’s warning to a party that his failure
25 to obey the court’s order will result in dismissal satisfies the “consideration of alternatives”
26 requirement. Ferdik, 963 F.2d at 1262; Malone, 833 at 132-33; Henderson, 779 F.2d at 1424. The
27 Court’s order requiring Plaintiff to file an amended complaint was clear that dismissal would result
28 from non-compliance with the Court's order. (Doc. 6, 8: 8-10) (“If Plaintiff fails to file an amended

1 complaint within **thirty (30) days** from the date of service of this order, this action will be dismissed
2 with prejudice for failure to state a claim.”) (emphasis in original.)

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 Anthony W. Ishii, United
7 States District Court Judge, pursuant to the provisions of 28 U.S.C. Section 636 (b)(1)(B). Within
8 fifteen (15) days after being served with a copy, Plaintiff may file written objections with the Court.
9 Such a document should be captioned “Objections to Magistrate Judge’s Findings and
10 Recommendation.” The Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C.
11 § 636(b)(1)(C). Plaintiff is advised that failure to file objections within the specified time may waive
12 the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

13 IT IS SO ORDERED.

14 **Dated: November 30, 2011**

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

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