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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RAYMOND M. FISHER,)	1:11cv1580 LJO DLB
)	
)	
Plaintiff,)	FINDINGS AND RECOMMENDATION
)	REGARDING DISMISSAL OF ACTION
v.)	
COUNTY OF FRESNO, et al.,)	
)	
Defendants.)	

On September 19, 2011, Plaintiff Raymond M. Fisher filed this civil rights action. Pursuant to Court order, he filed a First Amended Complaint on March 5, 2012.

On March 21, 2012, the Court dismissed the First Amended Complaint but granted Plaintiff leave to file an amended complaint. The Court provided Plaintiff with the relevant legal standards and directed him to file an amended complaint within thirty (30) days. More than thirty (30) days have passed and Plaintiff has failed to file an amended complaint.

For the reasons discussed below, the Court recommends that this action be dismissed for failure to follow a Court order and failure to state a claim.

DISCUSSION

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

1 to control their dockets and “[i]n the exercise of that power they may impose sanctions including,
2 where appropriate, . . . dismissal.” [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 apprised of
9 address); [Malone v. United States Postal Serv.](#), 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for
10 failure to comply with court order); [Henderson v. Duncan](#), 779 F.2d 1421, 1424 (9th Cir. 1986)
11 (dismissal for lack of prosecution and failure to comply with local rules).

12 In determining whether to dismiss an action for lack of prosecution, failure to obey a court
13 order, or failure to comply with local rules, the court must consider several factors: (1) the
14 public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket;
15 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on
16 their merits; and (5) the availability of less drastic alternatives. *Thompson*, 782 F.2d at 831;
17 [Henderson](#), 779 F.2d at 1423-24; [Malone](#), 833 F.2d at 130; [Ferdik](#), 963 F.2d at 1260-61; [Ghazali](#),
18 [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 the docket weigh in favor of dismissal. This case
21 has been pending since September 19, 2011, and Plaintiff has been given two opportunities to
22 correct the deficiencies in his complaint. The third factor, risk of prejudice to defendants, also
23 weighs in favor of dismissal, since a presumption of injury arises from the occurrence of
24 unreasonable delay in prosecuting an action. [Anderson v. Air West, Inc.](#), 542 F.2d 522, 524 (9th
25 Cir. 1976). The fourth factor -- public policy favoring disposition of cases on their merits -- is
26 greatly outweighed by the factors in favor of dismissal discussed herein. Finally, a court’s
27 warning to a party that his failure to obey the court’s order will result in dismissal satisfies the
28 “consideration of alternatives” requirement. [Ferdik](#), 963 F.2d at 1262; [Malone](#), 833 at 132-33;

1 [Henderson, 779 F.2d at 1424](#). The Court’s March 21, 2012, order requiring Plaintiff to file an
2 amended complaint expressly stated: “If Plaintiff neither files a notice of voluntary dismissal nor
3 files an amended complaint, this action will be dismissed for failure to obey a court order.
4 This is Plaintiff’s final opportunity to amend.” Thus, Plaintiff had adequate warning that
5 dismissal would result from his noncompliance with the Court’s order and his failure to state a
6 claim.

7 **RECOMMENDATION**

8 Accordingly, the Court HEREBY RECOMMENDS that this action be DISMISSED for
9 failure to follow a court order and for failure to state a claim.

10 These Findings and Recommendations will be submitted to the Honorable Lawrence J.
11 O’Neill, pursuant to the provisions of [Title 28 U.S.C. § 636\(b\)\(1\)](#). Within **thirty (30) days** after
12 being served with these Findings and Recommendations, Plaintiff may file written objections with
13 the Court. The document should be captioned “Objections to Magistrate Judge's Findings and
14 Recommendations.” Plaintiff is advised that failure to file objections within the specified time
15 may waive the right to appeal the District Court’s order. [Martinez v. Ylst, 951 F.2d 1153 \(9th Cir.](#)
16 [1991\)](#).

17 IT IS SO ORDERED.

18 **Dated: May 10, 2012**

19 **/s/ Dennis L. Beck**
20 **UNITED STATES MAGISTRATE JUDGE**