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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

STEVEN RALPH HAACK,
Plaintiff,
v.
CALIFORNIA DEPARTMENT OF
CORRECTIONS & REHABILITATION, *et*
al.,
Defendants.

) 1:12-cv-00098 LJO GSA
)
) **FINDINGS AND RECOMMENDATIONS**
) **TO DISMISS THIS ACTION FOR A**
) **FAILURE TO OBEY A COURT ORDER**

PROCEDURAL BACKGROUND

Defendant California Department of Corrections and Rehabilitation (“CDCR”) removed this action from the Tulare County Superior Court to this Court on January 20, 2012. (Doc. 1.)

Defendant’s motion to dismiss (Doc. 6) was granted on February 21, 2012, by District Judge Lawrence J. O’Neill and judgment was entered in Defendant’s favor against Plaintiff Steven Ralph Haack. (Doc. 7 & 8.)

Thereafter, the undersigned issued a minute order converting the Initial Scheduling Conference to a Status Conference to be held March 27, 2012. In the minute order, Plaintiff’s counsel was expressly directed to be prepared to “address the status of service of the remaining

1 defendants” at that conference. (*See* Doc. 10.) However, Plaintiff’s counsel failed to appear on
2 Plaintiff’s behalf as directed. (*See* Doc. 11.)

3 Accordingly, on March 27, 2012, the undersigned issued an Order to Show Cause
4 wherein Plaintiff was ordered to file a written response “on or before **April 2, 2012**, to show
5 cause, if any, why this action should not be dismissed for a failure to follow a Court order.”
6 (Doc. 12, emphasis in original.)

7 Nevertheless, Plaintiff has failed to file a written response as directed.

8 DISCUSSION

9 Local Rule 110 provides that "failure of counsel or of a party to comply with these Local
10 Rules or with any order of the Court may be grounds for the imposition by the Court of any and
11 all sanctions . . . within the inherent power of the Court." District courts have the inherent power
12 to control their dockets and "in the exercise of that power, they may impose sanctions including,
13 where appropriate . . . dismissal of a case." *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th
14 Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute
15 an action, failure to obey a court order, or failure to comply with local rules. *See, e.g. Ghazali v.*
16 *Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik*
17 *v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an
18 order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir.
19 1988) (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court
20 apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal
21 for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir.
22 1986) (dismissal for failure to lack of prosecution and failure to comply with local rules).

23 In determining whether to dismiss an action for lack of prosecution, failure to obey a
24 court order, or failure to comply with local rules, the court must consider several factors: (1) the
25 public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket;
26 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on
27

1 their merits; and (5) the availability of less drastic alternatives. *Thompson v Housing Auth.*, 782
2 F.2d at 831; *Henderson v. Duncan*, 779 F.2d at 1423-24; *Malone v. U.S. Postal Service*, 833 F.2d
3 at 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali v. Moran*, 46 F.3d at 53.

4 In the instant case, the Court finds that the public's interest in expeditiously resolving this
5 litigation and the Court's interest in managing the docket weigh in favor of dismissal. Plaintiff
6 has failed to comply with two orders to date: to attend the status conference and to file a written
7 response to the Order to Show Cause. There is no reason to believe Plaintiff will begin to
8 comply or otherwise participate in this matter.

9 The third factor, risk of prejudice to defendants, also weighs in favor of dismissal, since a
10 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.
11 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). In fact, Plaintiff originally filed his
12 complaint in the Tulare County Superior Court on or about September 22, 2011, naming
13 Defendant CDCR, as well as Kathleen Allison and the Substance Abuse Treatment Facility and
14 State Prison as defendants. However, there is no evidence that either Ms. Allison or the
15 Substance Abuse Treatment Facility were ever served with the complaint, despite it having been
16 filed nearly 200 days ago. The fourth factor -- public policy favoring disposition of cases on their
17 merits -- is greatly outweighed by the factors in favor of dismissal discussed herein.

18 Finally, a court's warning to a party that his failure to obey the court's order will result in
19 dismissal satisfies the "consideration of alternatives" requirement. *Ferdik v. Bonzelet*, 963 F.2d
20 at 1262; *Malone v. U.S. Postal Service*, 833 at 132-33; *Henderson v. Duncan*, 779 F.2d at 1424.
21 Here, the Court's order expressly stated: "Failure to respond to this Order to Show Cause within
22 the time specified may also result in dismissal of this action." (Doc. 12 at 3.) Thus, Plaintiff had
23 adequate warning that dismissal would result from noncompliance with the Court's order.

24 Accordingly, the Court HEREBY RECOMMENDS that this action be dismissed based
25 on Plaintiff's failure to obey the Court's order of March 27, 2012, and a failure to prosecute the
26 action.

