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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

WILLIAM RENE SILVEIRA,

1:12-cv-0419-LJO-MJS (PC)

Plaintiff,

FINDINGS AND RECOMMENDATIONS  
FOR DISMISSAL OF PLAINTIFF'S  
ACTION

v.

SIX UNKNOWN NAMES AGENTS, et  
al.,

(ECF No. 2)

Defendants.

FOURTEEN DAY DEADLINE

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Plaintiff William Rene Silveira ("Plaintiff") is a prisoner proceeding pro se in a civil rights action pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971).

On April 10, 2012, the Court ordered Plaintiff's Complaint to be stricken from the record because it lacked Plaintiff's signature and directed Plaintiff to file a signed complaint within fourteen days from service of the Order. (ECF No. 2.) Plaintiff was informed that failure to comply with the Order would result in dismissal of the action. (Id.) Plaintiff was to respond by April 24, 2012. (Id.) April 24, 2012, has passed without a response from Plaintiff.

Local Rule 110 provides that "failure of counsel or of a party to comply with these Rules or with any order of the Court may be grounds for imposition by the Court of any and all sanctions . . . within the inherent power of the Court." District courts have the inherent power to control their dockets and "in the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal of a case." Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with

1 prejudice, based on a party's failure to prosecute an action, failure to obey a court order,  
2 or failure to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th  
3 Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d  
4 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring  
5 amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988)  
6 (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court  
7 apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987)  
8 (dismissal for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421,  
9 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local  
10 rules).

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

18 In the instant case, the Court finds that the public's interest in expeditiously  
19 resolving this litigation and the Court's interest in managing the docket weigh in favor of  
20 dismissal. The third factor, risk of prejudice to the defendant, also weighs in favor of  
21 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay  
22 in prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The  
23 fourth factor -- public policy favoring disposition of cases on their merits -- is greatly  
24 outweighed by the factors in favor of dismissal discussed herein. Finally, a court's  
25 warning to a party that his failure to obey the court's order will result in dismissal satisfies  
26 the "consideration of alternatives" requirement. Ferdik v. Bonzelet, 963 F.2d at 1262;  
27 Malone, 833 at 132-33; Henderson, 779 F.2d at 1424. The Court's Order expressly  
28 stated: "The failure to comply with this Order will result in dismissal of this action." (Order,

1 ECF No. 2.) Thus, Plaintiff had adequate warning that dismissal would result from his  
2 noncompliance with the Court's Order.

3 Accordingly, it is **RECOMMENDED** that in the event that Plaintiff does not file a  
4 signed complaint within **fourteen (14) days** of entry of this Order, this matter be  
5 **DISMISSED by the District Judge**.

6 These findings and recommendations are submitted to the United States District  
7 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).  
8 Within fourteen days after being served with these findings and recommendations, any  
9 party may file written objections with the court and serve a copy on all parties. Such a  
10 document should be captioned "Objections to Magistrate Judge's Findings and  
11 Recommendations." Any reply to the objections shall be served and filed within ten days  
12 after service of the objections. The parties are advised that failure to file objections within  
13 the specified time may waive the right to appeal the District Court's order. Martinez v.  
14 Ylst, 951 F.2d 1153 (9th Cir. 1991).

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19 IT IS SO ORDERED.

20 Dated: May 10, 2012

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE