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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

DEVON DION MANNINGS,  
  
Plaintiff,  
  
v.  
  
C/O PALERMO, et al.,  
  
Defendants.

Case No. 1:12-cv-02038-AWI-BAM-PC  
  
FINDINGS AND RECOMMENDATIONS  
THAT THIS ACTION BE DISMISSED FOR  
FAILURE TO PROSECUTE AND TO OBEY  
A COURT ORDER  
  
OBJECTIONS DUE IN THIRTY DAYS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(1)(B) and Local Rule 302.

On July 20, 2015, an order was entered, directing Plaintiff to file an opposition or statement of non-opposition to Defendants’ motion for summary judgment. Plaintiff was specifically cautioned that his failure to comply would result in a recommendation that this action be dismissal for failure to prosecute pursuant to Local Rule 110. To date, Plaintiff has not filed an opposition or statement of non-opposition to Defendants’ motion for summary judgment.

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 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,

1 where appropriate . . . dismissal of a case.” Thompson v. Housing Auth., 782 F.2d 829, 831 (9th  
2 Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute  
3 an action, failure to obey a court order, or failure to comply with local rules. See, e.g., Ghazali v.  
4 Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)(dismissal for noncompliance with local rule); Ferdik v.  
5 Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)(dismissal for failure to comply with an order  
6 requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir.  
7 1998)(dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court  
8 apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987)(dismissal  
9 for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir.  
10 1986)(dismissal for lack of prosecution and failure to comply with local rules).

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

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

27 Accordingly, IT IS RECOMMENDED that this action be dismissed pursuant to Local  
28 Rule 110 for Plaintiff’s failure to obey a court order.

1           These findings and recommendations are submitted to the United States District Judge  
2 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B). Within thirty days  
3 after being served with these findings and recommendations, Plaintiff may file written objections  
4 with the Court. Such a document should be captioned “Objections to Magistrate Judge’s  
5 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the  
6 specified time waives all objections to the judge’s findings of fact. See Turner v. Duncan 158  
7 F.3d 449, 455 (9th Cir. 1988). Failure to file objections within the specified time may waive the  
8 right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

9  
10 IT IS SO ORDERED.

11 Dated: September 8, 2015

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE