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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

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9 TONY SLEDGE,) 1:13-CV-01826 LJO DLB PC
10)
11 Plaintiff,) FINDINGS AND RECOMMENDATION TO
12) DISMISS ACTION FOR FAILURE TO
13 vs.) COMPLY WITH A COURT ORDER
14 LT. P. COVELLO, et al.,) (FOURTEEN DAY DEADLINE)
15)
16 Defendants.)
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18 Plaintiff Tony Sledge (“Plaintiff”) is a prisoner in the custody of the California
19 Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro se in this
20 civil rights action pursuant to 42 U.S.C. § 1983.
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22 On October 20, 2014, the Court screened the complaint and dismissed it for failure to
23 state a claim for relief under 42 U.S.C. § 1983. Plaintiff was granted thirty (30) days to file an
24 amended complaint. The thirty (30) day period has now expired, and Plaintiff has not filed an
25 amended complaint or otherwise responded to the Court's order.
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27 Local Rule 110 provides that “failure of counsel or of a party to comply with these Local
28 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 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

1 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's
2 failure to prosecute an action, failure to obey a court order, or failure to comply with local rules.
3 See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with
4 local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to
5 comply with an order requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-
6 41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring pro se plaintiffs to
7 keep court apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir.
8 1987) (dismissal for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421,
9 1424 (9th Cir. 1986) (dismissal for failure to lack of prosecution and failure to comply with local
10 rules).

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12 In determining whether to dismiss an action for lack of prosecution, failure to obey a
13 court 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.

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

1 Bonzelet, 963 F.2d at 1262; Malone, 833 at 132-33; Henderson, 779 F.2d at 1424. The Court's
2 order expressly stated: "If Plaintiff fails to file an amended complaint in compliance with this
3 order, this action will be dismissed, with prejudice, for failure to state a claim." Thus, Plaintiff
4 had adequate warning that dismissal would result from his noncompliance with the Court's
5 order.

6 **RECOMMENDATION**

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8 Accordingly, the Court HEREBY RECOMMENDS that this action be dismissed with
9 prejudice based on Plaintiff's failure to state a claim and failure to comply with a court order.

10 These Findings and Recommendations are submitted to the United States District Judge
11 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen
12 (14) days after date of service of these Findings and Recommendations, Plaintiff may file written
13 objections with the Court. Such a document should be captioned "Objections to Magistrate
14 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections
15 within the specified time may waive the right to appeal the District Court's order. Martinez v.
16 Ylst, 951 F.2d 1153 (9th Cir. 1991).

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18 IT IS SO ORDERED.

19 Dated: December 8, 2014

20 /s/ Dennis L. Beck
21 UNITED STATES MAGISTRATE JUDGE
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