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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

WILLIAM M. BRYSON, JR.,  
Plaintiff,  
v.  
SUSAN B. GERSON, et al.,  
Defendants.

CASE NO. 1:13-cv-01979-LJO-MJS  
**FINDINGS AND RECOMMENDATION TO  
DISMISS ACTION WITHOUT PREJUDICE  
FOR FAILURE TO OBEY A COURT  
ORDER AND FAILURE TO PROSECUTE  
(ECF Nos. 14 & 15)  
FOURTEEN (14) DAY OBJECTION  
DEADLINE**

Plaintiff is a federal prisoner proceeding pro se and in forma pauperis in this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. On December 16, 2014, Plaintiff was ordered to submit, within thirty days, documents for service of the first amended complaint on Defendant Executive Office for United States Attorneys. (ECF No. 14.) The thirty-day deadline passed without Plaintiff either submitting his service documents or seeking an extension of time to do so.

On January 28, 2015, the Court ordered Plaintiff to show cause, within fourteen days, why the action should not be dismissed for failure to obey a court order and failure to prosecute. (ECF No. 15.) Plaintiff did not respond to the order to show cause and the time for doing so has passed.

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

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

23           In the instant case, the public’s interest in expeditiously resolving this litigation  
24 and the Court’s interest in managing its docket weigh in favor of dismissal. The third  
25 factor, risk of prejudice to Defendants, also weighs in favor of dismissal, since a  
26 presumption of injury arises from the occurrence of unreasonable delay in prosecuting  
27 this action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor –  
28 public policy favoring disposition of cases on their merits – is greatly outweighed by the

1 factors in favor of dismissal discussed herein. Finally, as for the availability of lesser  
2 sanctions, at this stage in the proceedings there is little available which would constitute  
3 a satisfactory lesser sanction while preserving scarce Court resources. Plaintiff has not  
4 paid the filing fees in this action and likely is unable to pay, making monetary sanctions  
5 of little use.

6 Based on the foregoing, it is HEREBY RECOMMENDED that the action be  
7 dismissed, without prejudice, for failure to obey a court order and failure to prosecute.

8 These findings and recommendations are submitted to the United States District  
9 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within  
10 fourteen (14) days after being served with these Findings and Recommendations, any  
11 party may file written objections with the Court and serve a copy on all parties. Such a  
12 document should be captioned "Objections to Magistrate Judge's Findings and  
13 Recommendations." Any reply to the objections shall be served and filed within fourteen  
14 (14) days after service of the objections. The parties are advised that failure to file  
15 objections within the specified time may result in the waiver of rights on appeal.  
16 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923  
17 F.2d 1391, 1394 (9th Cir. 1991)).

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19 IT IS SO ORDERED.

20 Dated: February 19, 2015

/s/ Michael J. Seng  
21 UNITED STATES MAGISTRATE JUDGE  
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