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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GARY FRANCIS FISHER,
Plaintiff,

v.
ARRESTING AGENT, et al.,
Defendants.

Case No. 1:14-cv-00644 LJO MJS (HC)

**FINDINGS AND RECOMMENDATION TO
DISMISS ACTION FOR FAILURE TO
FOLLOW COURT ORDER**

On March 11, 2014, Petitioner filed a petition for writ of habeas corpus. On May 12, 2014, the Court dismissed the petition without prejudice to filing an amended petition. (ECF No. 13.) Petitioner was provided thirty (30) days to file an amended petition, and was forewarned that failure to file an amended petition would result in the dismissal of the petition. (Id.) Petitioner did not file an amended petition.

I. DISCUSSION

Local Rule 110 provides that "[f]ailure 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). In determining whether to dismiss an action for lack of prosecution, failure to obey
11 a court order, or failure to comply with local rules, the court must consider several
12 factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need
13 to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
14 favoring disposition of cases on their merits; and (5) the availability of less drastic
15 alternatives. Ghazali, 46 F.3d at 53; Ferdik, 963 F.2d at 1260-61; Malone, 833 F.2d at
16 130; Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24.

17 In the instant case, the Court finds that the public's interest in expeditiously
18 resolving this litigation and the Court's interest in managing the docket weigh in favor of
19 dismissal because it does not appear that Plaintiff has made a good faith effort to
20 prosecute this matter. The third factor, risk of prejudice to defendants, also weighs in
21 favor of dismissal because a presumption of injury arises from any 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. Finally, a court's warning to a party that
25 his failure to obey the court's order will result in dismissal satisfies the "consideration of
26 alternatives" requirement. Ferdik, 963 F.2d at 1262; Malone, 833 F.2d at 132-33;
27 Henderson, 779 F.2d at 1424. Here, the Court's order was clear that dismissal would
28 result from non-compliance with the order. (See ECF No. 7 ["[F]ailure to follow this order

1 will result in dismissal of the petition pursuant to Local Rule 110.].)

2 **II. RECOMMENDATION**

3 Accordingly, the Court HEREBY RECOMMENDS that this action be DISMISSED
4 for Plaintiff's failure to comply with a court order.

5 This Findings and Recommendation is submitted to the assigned United States
6 District Court Judge, pursuant to the provisions of Title 28 of the United States Code
7 section 636 (b)(1)(B). Within thirty (30) days after being served with a copy, any party
8 may file written objections with the court and serve a copy on all parties. Such a
9 document should be captioned "Objections to Magistrate Judge's Findings and
10 Recommendation." The Court will then review the Magistrate Judge's ruling pursuant to
11 Title 28 of the United States Code section 636(b)(1)(C). Finally, Plaintiff is advised that
12 failure to file objections within the specified time may waive the right to appeal the
13 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

14
15 IT IS SO ORDERED.

16 Dated: June 20, 2014

17 /s/ Michael J. Seng
18 UNITED STATES MAGISTRATE JUDGE

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