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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

DERRICK JESUS ODEN, SR.,	)	1:14-cv-00873-LJO-BAM (PC)
	)	
Plaintiff,	)	FINDINGS AND RECOMMENDATIONS
	)	REGARDING DISMISSAL OF ACTION
v.	)	FOR FAILURE TO STATE A CLAIM,
	)	FAILURE TO OBEY A COURT ORDER,
STATE OF CALIFORNIA, et al.,	)	AND FAILURE TO PROSECUTE
	)	
Defendants.	)	(ECF Nos. 16, 18)
	)	
	)	FOURTEEN-DAY DEADLINE
	)	
	)	

Plaintiff Derrick Jesus Oden, Sr., (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on June 9, 2014.

On June 1, 2015, the Court dismissed Plaintiff’s second amended complaint with leave to amend within thirty days. On July 15, 2015, Plaintiff was granted an additional thirty days to amend his complaint. (ECF No. 18.) Plaintiff was warned that if he failed to file a third amended complaint in compliance with the Court’s order, this action would be dismissed for failure to obey a court order and failure to state a claim. (ECF No. 16.) The deadline for Plaintiff to file his third amended complaint has passed, and he has not complied with or otherwise responded to the Court’s order.

1 Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with  
2 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . .  
3 within the inherent power of the Court.” District courts have the inherent power to control their  
4 dockets and “[i]n the exercise of that power they may impose sanctions including, where  
5 appropriate, . . . dismissal.” Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A  
6 court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action,  
7 failure to obey a court order, or failure to comply with local rules. See, e.g., Ghazali v. Moran,  
8 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v.  
9 Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order  
10 requiring amendment of complaint); Malone v. U.S. Postal Service, 833 F.2d 128, 130-33 (9th  
11 Cir. 1987) (dismissal for failure to comply with court order).

12 In determining whether to dismiss an action, the Court must consider several factors: (1)  
13 the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its  
14 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
15 cases on their merits; and (5) the availability of less drastic sanctions. Henderson v. Duncan, 779  
16 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856 F.2d 1439 (9th Cir. 1988).

17 The Court finds that the public’s interest in expeditiously resolving this litigation and the  
18 Court’s interest in managing the docket weigh in favor of dismissal. This action has been  
19 pending since June 2014. Plaintiff has made no attempt to contact the Court or otherwise  
20 comply with the Court’s most recent orders. The Court cannot hold this case in abeyance  
21 awaiting such compliance by Plaintiff. The third factor, risk of prejudice to defendant, also  
22 weighs in favor of dismissal, since a presumption of injury arises from the occurrence of  
23 unreasonable delay in prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir.  
24 1976). The fourth factor -- public policy favoring disposition of cases on their merits -- is greatly  
25 outweighed by the factors in favor of dismissal discussed herein. Finally, the court’s warning to  
26 a party that failure to obey the court’s order will result in dismissal satisfies the “considerations  
27 of the alternatives” requirement. Ferdik, 963 F.2d at 1262; Malone, 833 at 132-133; Henderson,  
28 779 F.2d at 1424. The Court’s June 1, 2015 order granting Plaintiff leave to amend his

1 complaint expressly stated, “If Plaintiff fails to file a third amended complaint in compliance  
2 with this order, this action will be dismissed for failure to obey a court order and for failure to  
3 state a claim.” (ECF No. 16, p. 8.) Thus, Plaintiff had adequate warning that dismissal could  
4 result from his noncompliance with the Court’s order.

5 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed based on  
6 Plaintiff’s failure to comply with the Court’s June 1, 2015 order, for failure to state a claim, and  
7 for failure to prosecute.

8 These findings and recommendations will be submitted to the United States District  
9 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
10 **fourteen (14) days** after being served with these findings and recommendations, Plaintiff may  
11 file written objections with the Court. The document should be captioned “Objections to  
12 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file  
13 objections within the specified time may result in the waiver of the “right to challenge the  
14 magistrate’s factual findings” on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir.  
15 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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17 IT IS SO ORDERED.

18 Dated: August 27, 2015

19 /s/ Barbara A. McAuliffe  
20 UNITED STATES MAGISTRATE JUDGE  
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