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

JOE ANTHONY GONZALES,  
  
                    Plaintiff,  
  
          v.  
  
H. TATE, et al.,  
  
                    Defendants.

Case No. 1:14-cv-01181 AWI DLB PC  
  
FINDINGS AND RECOMMENDATIONS  
REGARDING DISMISSAL OF ACTION  
FOR FAILURE TO FOLLOW COURT  
ORDER AND FAILURE TO PROSECUTE  
  
THIRTY-DAY DEADLINE

Plaintiff Joe Anthony Gonzales (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action. Plaintiff filed this action on July 29, 2014.

On February 12, 2015, the Court ordered Plaintiff to return service documents within thirty (30) days. Plaintiff did not submit the documents within the specified time period. As a result, the Court issued an order to show cause why the action should not be dismissed on March 30, 2015. Plaintiff failed to respond to the order to show cause or otherwise contact the Court.

**DISCUSSION**

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 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 “[i]n the exercise of that power they may impose sanctions including, where appropriate, . . . dismissal.” Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986).

1 A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action,  
2 failure to obey a court order, or failure to comply with local rules. See e.g. Ghazali v. Moran, 46  
3 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963  
4 F.2d 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) (dismissal for  
6 failure to comply with local rule requiring pro se plaintiffs to keep court apprised of address); Malone  
7 v. United States Postal Serv., 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with  
8 court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of  
9 prosecution and failure to comply with local rules).

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

16 In the instant case, the Court finds that the public's interest in expeditiously resolving this  
17 litigation and the Court's interest in managing the docket weigh in favor of dismissal. This case has  
18 been pending since July 29, 2014, but Plaintiff has not returned service documents to initiate service  
19 of process. In fact, Plaintiff has not communicated with this Court since he filed his action in July  
20 2014.

21 The third factor, risk of prejudice to defendants, also weighs in favor of dismissal, since a  
22 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.  
23 Anderson v. Air West, Inc., 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor -- public policy  
24 favoring disposition of cases on their merits -- is greatly outweighed by the factors in favor of  
25 dismissal discussed herein.

26 Finally, a court's warning to a party that her failure to obey the court's order will result in  
27 dismissal satisfies the "consideration of alternatives" requirement. Ferdik, 963 F.2d at 1262;  
28 Malone, 833 at 132-33; Henderson, 779 F.2d at 1424. The Court's March 30, 2015, order to show

1 cause expressly stated: "Failure to respond to this order will result in dismissal of this action."  
2 Thus, Plaintiff had adequate warning that dismissal would result from his noncompliance with the  
3 Court's order.

4 **RECOMMENDATION**

5 Accordingly, the Court HEREBY RECOMMENDS this action be dismissed, without  
6 prejudice, for failure to obey the Court's orders and failure to prosecute.

7 These Findings and Recommendations will be submitted to the United States District Judge  
8 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within twenty (20)  
9 days after being served with these Findings and Recommendations, Plaintiff may file written  
10 objections with the Court. The document should be captioned "Objections to Magistrate Judge's  
11 Findings and Recommendations." Plaintiff is advised that failure to file objections within  
12 the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951  
13 F.2d 1153 (9th Cir. 1991).

14 IT IS SO ORDERED.

15  
16 Dated: May 18, 2015

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE