

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JACK BORDERS,
Plaintiff,

v.

CITY OF TULARE; OFFICER ERIC
TREVINO; OFFICER JULIA FRANCO;
TULARE POLICE CHIEF JERRY
BRECKERIDGE; CAPTAIN BROOKSHER;
LT. LORI CANABA VILLASENOR;
TULARE CITY MANAGER DON
BOORMAN; BRAZIL LITIGATION; and
MARIAN CORREIA,
Defendants.

Case No. 1:16-cv-01818-DAD-SKO

**FINDINGS AND RECOMMENDATIONS
THAT THIS CASE SHOULD BE
DISMISSED WITH PREJUDICE FOR
FAILURE TO COMPLY WITH A COURT
ORDER**

(Doc. 4)

OBJECTIONS DUE: 14 DAYS

INTRODUCTION

On December 2, 2016, Plaintiff Jack Borders, proceeding pro se, filed a complaint against City of Tulare, Officer Eric Trevino, Officer Julia Franco, Tulare Police Chief Jerry Breckeridge, Captain Brooksher, Lt. Lori Canaba Villasenor, Tulare City Manager Don Boorman, “Brazil

1 Litigation,” and Marian Correia (collectively “Defendants”).¹ Plaintiff also filed an application to
2 proceed *in forma pauperis* (IFP). (Doc. 2.) On March 23, 2017, the undersigned dismissed
3 Plaintiff’s complaint for failure to comply with Fed. R. Civ. P. 8 and lack of subject matter
4 jurisdiction, and granted Plaintiff thirty (30) days leave to file an amended complaint curing the
5 pleading deficiencies identified in the Order. (Doc. 3.) Plaintiff failed to file an amended
6 complaint. (*See* Docket.)

7 On June 6, 2017, the Court entered an Order to Show Cause (“OSC”) ordering Plaintiff to
8 file a statement showing cause why the Court should not recommend to the presiding district court
9 judge that this action be dismissed for Plaintiff’s failure to comply with the Court’s March 23,
10 2017 Order by not filing an amended complaint within the specified period of time. (Doc. 4.) In
11 its OSC, the Court cautioned Plaintiff that, if he failed to file this statement within 21 days of
12 service of the OSC, the Court would recommend to the presiding district court judge that this
13 action be dismissed, in its entirety. (*Id.*) More than 21 days of service of the OSC have elapsed
14 without Plaintiff having filed a response to the OSC. (*See* Docket.)

15 DISCUSSION

16 Local Rule 110 provides that “[f]ailure of counsel or of a party to comply with these Rules
17 or with any order of the Court may be grounds for the imposition by the Court of any and all
18 sanctions . . . within the inherent power of the Court.” District courts have the inherent power to
19 control their dockets and “[i]n the exercise of that power they may impose sanctions, including,
20 where appropriate . . . dismissal.” *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th Cir. 1986).
21 A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action,
22 failure to obey a court order, or failure to comply with local rules. *See, e.g., Ghazali v. Moran*, 46
23 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*,
24 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring
25 amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440–41 (9th Cir. 1988) (dismissal for
26 failure to comply with local rule requiring pro se plaintiff to keep court apprised of address);
27

28 ¹ The complaint’s caption also names Rachel Whipple as a purported plaintiff, but the complaint does not appear to
allege any causes of action on her behalf. (*See* Doc. 1.)

1 *Malone v. U.S. Postal Service*, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to
2 comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal
3 for failure to prosecute and failure to comply with local rules).

4 In determining whether to dismiss an action for failure to obey a court order or failure to
5 comply with the Local Rules, the court must consider several factors, including: “(1) the public’s
6 interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the
7 risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their
8 merits; and (5) the availability of less drastic sanctions.” *Henderson*, 779 F.2d at 1423–24; *see*
9 *also Ferdik*, 963 F.2d at 1260–61; *Thompson*, 782 F.2d at 831. “The public’s interest in
10 expeditious resolution of litigation always favors dismissal.” *Pagtalunan v. Galaza*, 291 F.3d 639,
11 642 (9th Cir. 2002) (quoting *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)).

12 Here, the Court finds that the public’s interest in expeditiously resolving this litigation and
13 the Court’s interest in managing the docket weigh in favor of dismissal. The third factor, risk of
14 prejudice to Defendants, also weighs in favor of dismissal, since a presumption of injury arises
15 from the occurrence of unreasonable delay in prosecuting an action. *Anderson v. Air West*, 542
16 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring disposition of cases on
17 their merits—is greatly outweighed by the factors in favor of dismissal discussed herein. Finally,
18 a court’s warning to a party that his failure to obey the court’s order will result in dismissal
19 satisfies the “consideration of alternatives” requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833
20 F.2d at 132–33; *Henderson*, 779 F.2d at 1424. The OSC expressly ordered Plaintiff to file a
21 statement showing cause why the Court should not recommend to the presiding district court
22 judge that this action be dismissed for failing to comply with the Court’s March 23, 2017 Order by
23 not filing an amended complaint within the specified period of time. (Doc. 4.) Thus, Plaintiff had
24 adequate warning that sanctions, up to and including dismissal of the case, would result from his
25 noncompliance with the OSC.

26 Accordingly, pursuant to Local Rule 110 and the Court’s inherent power to sanction, the
27 undersigned RECOMMENDS that this case be DISMISSED with prejudice.

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION AND RECOMMENDATION

Accordingly, IT IS HEREBY RECOMMENDED that this case be DISMISSED with prejudice for failing to comply with the Court’s Orders entered March 23 and June 6, 2017.

The Court further DIRECTS the Clerk to send a copy of this order to Plaintiff at his address listed on the docket for this matter.

These findings and recommendations are submitted to the district judge assigned to this action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court’s Local Rule 304. Within fourteen (14) days of service of this recommendation, any party may file written objections to these findings and recommendations with the Court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The district judge will review the magistrate judge’s findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified time may waive the right to appeal the district judge’s order. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: July 6, 2017

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE