

1 Plaintiff's claims against Defendants Youngblood, Hakker, Smallwood, Rodriguez, Jane
2 and John Does 1-7, Lueck, Contreras, and the Kern County Sheriff's Office were
3 dismissed. (ECF No. 25.)

4 Plaintiff was ordered to submit service documents within thirty days of the Court's
5 June 25, 2014 screening order. (ECF No. 25.) Plaintiff sought and received four
6 extension of time to submit service documents. (ECF Nos. 31, 40, 47, 53.) He also filed
7 two appeals of the Court's screening order; both were dismissed for lack of jurisdiction.
8 (ECF Nos. 32, 38, 41, 45.) With his second notice of appeal, Plaintiff filed a "Request for
9 Court Certification," which appears to seek partial judgment as to the dismissed
10 defendants pursuant to Federal Rule of Civil Procedure 54(b). (ECF No. 41.) Plaintiff
11 wishes to appeal the dismissal of Defendants Youngblood, Hakker, Smallwood,
12 Rodriguez, Jane and John Does 1-7, Lueck, Contreras, and the Kern County Sheriff's
13 Office after his certification request is granted, or, if his request is denied, to appeal that
14 denial. The Court has yet to rule on the Request for Court Certification. Plaintiff has filed
15 a motion for ruling on his request. (ECF No. 51.)

16 Plaintiff has not submitted his service documents and the deadline for doing so
17 has passed. Plaintiff instead has filed a motion to stay proceedings pending a ruling on
18 his Request for Court Certification. (ECF No. 54.)

19 **I. MOTION FOR RULING**

20 Plaintiff has filed a motion for ruling on his Request for Court Certification. (ECF
21 No. 51.) The motion for ruling should be granted. The Request for Court Certification is
22 addressed herein.

23 **II. REQUEST FOR COURT CERTIFICATION**

24 Plaintiff seeks a final judgment as to the dismissed defendants in order to
25 immediately appeal the screening order pursuant to Federal Rule of Civil Procedure
26 54(b). (ECF No. 41.)

27 Generally, an appellate court will not review a district court's ruling until after entry
28 of a final judgment. See *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 478 (1978).

1 Where, as here, a decision or order “adjudicates fewer than all the claims or the rights
2 and liabilities of fewer than all the parties, [it] does not end the action as to any of the
3 claims or parties” and does not constitute a final judgment. See Fed. R. Civ. P. 54(b).
4 However, Federal Rule of Civil Procedure allows a court to “direct entry of a final
5 judgment as to one or more, but fewer than all, claims or parties . . . if the court
6 expressly determines that there is no just reason for delay.” Thus, a Rule 54(b) judgment
7 may be immediately appealed. James v. Price Stern Sloan, Inc., 283 F.3d 1064, 1068
8 n.6 (9th Cir. 2002).

9 “It is left to the sound judicial discretion of the district court to determine the
10 ‘appropriate time’ when each final decision in a multiple claims action is ready for
11 appeal.” Curtis-Wright Corp. v. Gen. Elec. Co., 446 U.S. 1, 8 (1980). Partial judgment
12 under Rule 54(b) “must be reserved for the unusual case in which the costs and risks of
13 multiplying the number of proceedings and of overcrowding the appellate docket are
14 outbalanced by pressing needs of the litigants for an early and separate judgment as to
15 some claims or parties.” Morrison-Knudsen Co., Inc. v. Archer, 655 F.2d 962, 965 (9th
16 Cir. 1981). “A similarity of legal or factual issues [still pending before the trial court] will
17 weigh heavily against entry of judgment under the rule, and in such cases a Rule 54(b)
18 order will be proper only where necessary to avoid a harsh and unjust result,
19 documented by further and specific findings.” Frank Briscoe Co., Inc. v. Morrison–
20 Knudsen Co., Inc., 776 F.2d 1414, 1416 (9th Cir.1985).

21 Here, final judgment as to the dismissed defendants is not appropriate. This is not
22 an “unusual case.” Morrison-Knudsen Co., Inc., 655 F.2d at 965. Indeed, the Court is
23 faced with similar claims almost daily. Moreover, the Court does not find that there are
24 any pressing needs that require an early and separate judgment as to the dismissed
25 defendants. Finally, multiplying the number of proceedings in this case will not ensure
26 efficient use of court resources. To the contrary, Plaintiff’s prior attempts at a piecemeal
27 appeal, and the resultant delay in serving Defendants Lozano, Wood, and Perkins,
28 demonstrate that entry of a Rule 54(b) judgment would frustrate the prompt and efficient

1 resolution of this case. The Court does not find that there is “no just reason for delay.”
2 Fed. R. Civ. P. 54(b).

3 Accordingly, Plaintiff’s request for court certification should be denied.

4 **III. MOTION TO STAY COURT PROCEEDINGS**

5 Plaintiff requests a stay pending the ruling on his Request for Court Certification.
6 In light of the recommendation that his Request be denied, it also is recommended that
7 his request to stay further proceedings be denied.

8 **IV. FAILURE TO OBEY A COURT ORDER AND FAILURE TO PROSECUTE**

9 On November 3, 2014, Plaintiff filed his fourth request for extension of time,
10 seeking an additional sixty days in which to submit service documents. On November
11 17, 2014, the Court concluded that Plaintiff has not presented good cause for such an
12 extension, but nonetheless granted Plaintiff a fourteen day extension of time. The
13 Court’s order advised Plaintiff that no further extension of time would be granted, absent
14 a showing of changed circumstances or other good cause. He was advised that he
15 would be required to proceed with service on Defendants Lozano, Wood, and Perkins
16 regardless of how the Court ruled on the Request for Court Certification.

17 The Court specifically stated that it found no reason why its pending ruling on
18 Plaintiff’s request for certification should interfere with service on Defendants Lozano,
19 Wood, and Perkins. Plaintiff was warned that further requests for extension of time
20 based on his Request for Court Certification and intent to file further appeals would not
21 constitute good cause. He also was warned that his failure to submit service documents
22 within the fourteen days allowed would result in a recommendation that the action be
23 dismissed, with prejudice, for failure to prosecute. Nevertheless, the fourteen day
24 deadline has passed without Plaintiff filing his service documents or seeking an
25 extension of time to do so.

26 Local Rule 110 provides that “failure of counsel or of a party to comply with these
27 Rules or with any order of the Court may be grounds for imposition by the Court of any
28 and all sanctions . . . within the inherent power of the Court.” District courts have the

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

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

20 In the instant case, the public’s interest in expeditiously resolving this litigation
21 and the Court’s interest in managing its docket weigh in favor of dismissal. The third
22 factor, risk of prejudice to Defendants, also weighs in favor of dismissal, since a
23 presumption of injury arises from the occurrence of unreasonable delay in prosecuting
24 this action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor –
25 public policy favoring disposition of cases on their merits – is greatly outweighed by the
26 factors in favor of dismissal discussed herein. Finally, as for the availability of lesser
27 sanctions, at this stage in the proceedings there is little available which would constitute
28 a satisfactory lesser sanction while preserving scarce Court resources. Plaintiff has not

1 paid the filing fee for this action and likely is unable to pay, making monetary sanctions
2 of little use.

3 Accordingly, the Court will recommended that Plaintiff's action be dismissed with
4 prejudice for failure to prosecute and failure to obey a court order.

5 **V. CONCLUSION AND RECOMMENDATION**

6 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 7 1. Plaintiff's motion for ruling (ECF No. 51) be GRANTED;
8 2. Plaintiff's request for court certification (ECF No. 41) be DENIED;
9 3. Plaintiff's motion to stay court proceedings (ECF No. 54) be DENIED; and
10 4. This action be dismissed, with prejudice for failure to prosecute and failure
11 to obey a court order (ECF No. 53).

12 These Findings and Recommendations are submitted to the United States District
13 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
14 fourteen (14) days after being served with these Findings and Recommendations, any
15 party may file written objections with the Court and serve a copy on all parties. Such a
16 document should be captioned "Objections to Magistrate Judge's Findings and
17 Recommendations." Any reply to the objections shall be served and filed within fourteen
18 (14) days after service of the objections. The parties are advised that failure to file
19 objections within the specified time may result in the waiver of rights on appeal.
20 Wilkerson v. Wheeler, ___ F.3d ___, ___, No. 11-17911, 2014 WL 6435497, at *3 (9th Cir.
21 Nov. 18, 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

22
23 IT IS SO ORDERED.

24 Dated: December 11, 2014

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