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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

STANLEY SIMS,

Plaintiff,

v.

W. ULIT,

Defendants.

CASE NO. 1:11-cv-00140-AWI-MJS (PC)

FINDINGS AND RECOMMENDATIONS  
FOR DISMISSAL OF ACTION WITH  
PREJUDICE FOR FAILURE TO STATE A  
CLAIM SUBJECT TO 28 U.S.C. § 1915(g)

(ECF NO. 10)

FOURTEEN (14) DAY DEADLINE

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On January 26, 2011, Plaintiff Stanley Sims, a former state prisoner proceeding pro se and in forma pauperis filed this civil rights action pursuant to 42 U.S.C. § 1983. (Compl., ECF No. 1.)

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has

1 raised claims that are legally “frivolous, malicious,” or that fail to state a claim upon  
2 which relief may be granted, or that seek monetary relief from a defendant who is  
3 immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or  
4 any portion thereof, that may have been paid, the court shall dismiss the case at any  
5 time if the court determines that ... the action or appeal ... fails to state a claim upon  
6 which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

8 After screening, Plaintiff’s original Complaint was dismissed, but he was given  
9 leave to amend provided he did so on or before March 6, 2012. (Order Dismiss Compl.,  
10 ECF No. 9.) Plaintiff did not file an amended complaint or otherwise respond by the  
11 March 6, 2012 deadline.

13 On March 21, 2012, the Court issued an Order to Show Cause Why the Case  
14 Should not be Dismissed(Order to Show Cause, ECF No. 10), requiring Plaintiff to  
15 respond or file an amended complaint by April 2, 2012. Plaintiff was advised that failure  
16 to meet this deadline would result in the dismissal of his action. The April 2, 2012  
17 deadline has passed without Plaintiff filing any response or amended complaint.

19 Local Rule 110 provides that “failure of counsel or of a party to comply with these  
20 Rules or with any order of the Court may be grounds for imposition by the Court of any  
21 and all sanctions . . . within the inherent power of the Court.” District courts have the  
22 inherent power to control their dockets and “in the exercise of that power, they may  
23 impose sanctions including, where appropriate . . . dismissal of a case.” Thompson v.  
24 Housing Auth., 782 F.2d 829, 831-32 (9th Cir. 1986). A court may dismiss an action  
25 based on a party’s failure to prosecute an action, failure to obey a court order, or failure  
26 to comply with local rules. See Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)

1 (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258,  
2 1260-61 (9th Cir. 1992) (dismissal for failure to comply with court order); Malone v. U.S.  
3 Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with  
4 court order).

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

12 In the instant case, the Court finds that the public's interest in expeditiously  
13 resolving litigation and the Court's interest in managing its docket weigh in favor of  
14 dismissal. In these respects, the Court has a vast caseload before it and can not  
15 indulge Plaintiff's disregard of its orders and rules. The third factor, risk of prejudice to  
16 the Defendants, also weighs in favor of dismissal, since a presumption of injury arises  
17 from delay in resolving an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir.  
18 1976). The fourth factor -- public policy favoring disposition of cases on their merits -- is  
19 greatly outweighed by the factors in favor of dismissal discussed herein. Given  
20 Plaintiff's non-responsiveness to the Court's earlier orders and his pro se and in forma  
21 pauperis status, "less drastic alternatives" other than those taken to date (i.e., repeated  
22 orders to Plaintiff to comply) do not exist and the ultimate sanction of dismissal is  
23 warranted. Malone, 833 at 132-33.

1 Plaintiff's Complaint fails to state any cognizable federal claim. He has failed to  
2 comply with the Court's orders and rules. No lesser sanction than dismissal is  
3 appropriate.

4 Accordingly, it is RECOMMENDED that this matter be DISMISSED WITH  
5 PREJUDICE by the District Judge and that dismissal count as a strike under 28 U.S.C.  
6 § 1915(g). These findings and recommendations are submitted to the United States  
7 District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. §  
8 636(b)(1). Within fourteen (14) days after being served with these Findings and  
9 Recommendations, any party may file written objections with the Court and serve a  
10 copy on all parties. Such a document should be captioned "Objections to Magistrate  
11 Judge's Findings and Recommendations." Any reply to the objections shall be served  
12 and filed within ten (10) days after service of the objections. The parties are advised  
13 that failure to file objections within the specified time may waive the right to appeal the  
14 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).  
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20 IT IS SO ORDERED.

21 Dated: April 26, 2012

1st Michael J. Seng  
22 UNITED STATES MAGISTRATE JUDGE  
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