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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

STEWART MANAGO,

CASE NO. 1:11-cv-02003-JLT PC

Plaintiff,

**FINDINGS AND RECOMMENDATIONS
THAT THE ACTION BE DISMISSED FOR
FAILURE TO PAY FILING FEE AND
PROSECUTE THIS CASE**

v.

F. GONZALEZ, et al.,

Defendants.

_____ /

Plaintiff Stewart Manago, a state prisoner proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983. On January 5, 2012, Plaintiff filed a motion to proceed in forma pauperis. (Doc. 5.) On March 12, 2012, the Court denied Plaintiff’s motion to proceed in forma pauperis and provided him 14 days within which to pay the filing fee. (Doc. 9) Nevertheless, Plaintiff has failed to do so.

I. Discussion and Analysis

“District courts have inherent power to control their dockets,” and in exercising that power, a court may impose sanctions including dismissal of an action. *Thompson v. Housing Authority of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action with prejudice, based on a party’s failure to prosecute an action or failure to obey a court order, or failure to comply with local rules. *See, e.g., Ghazali v. Moran*, 46 F.3d 52, 53-54 (9 th Cir. 2995) (dismissal for failure to

1 comply with local rules); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for
2 failure to comply with an order requiring amendment of complaint); *Malone v. U.S. Postal Service*,
3 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with a court order); *Henderson*
4 *v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply
5 with local rules).

6 In determining whether to dismiss an action for failure to prosecute, failure to obey a court
7 order, or failure to comply with the Local Rules, the Court must consider several factors, including:
8 “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its
9 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases
10 on their merits; and (5) the availability of less drastic sanctions.” *Henderson*, 779 F.2d at 1423-24;
11 *see also Ferdik*, 963 F.2d at 1260-61; *Thomson*, 782 F.2d at 831.

12 In the case at hand, the public’s interest in expeditiously resolving this litigation and the
13 Court’s interest in managing the docket weigh in favor of dismissal. The risk of prejudice to the
14 defendants also weighs in favor of dismissal, since a presumption of injury arises from the
15 occurrence of unreasonable delay in prosecution of an action. *See Anderson v. Air West*, 542 F.2d
16 522, 524 (9th Cir. 1976). The Court will not, and cannot, hold the case in abeyance based upon
17 Plaintiff’s failure to pay the filing fee and prosecute this action. Further, the policy favoring
18 disposition of cases on their merits is outweighed by the factors in favor of dismissal.

19 On March 12, 2011, the Court warned “Plaintiff SHALL pay the filing fee within 14 days
20 of the date of service of this order or the matter SHALL be dismissed.” (Doc. 9 at 2) Thus, Plaintiff
21 had adequate warning that dismissal would result from his noncompliance with the Court’s order,
22 and this satisfies the requirement that the Court consider less drastic measures than dismissal of the
23 action. *Ferdik*, 963 F.2d at 1262; *Henderson*, 779 F.2d at 1424. Moreover, no lesser sanction is
24 feasible given the Court’s inability to communicate with Plaintiff.

25 **IV. Findings and Recommendations**

26 Plaintiff has failed to prosecute his case, comply with the Court’s orders, and follow the
27 requirements of the Local Rules in this action. As set forth above, the factors set forth by the Ninth
28 Circuit weigh in favor of dismissal of the matter.

