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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JESSE T. MOTEN,

Plaintiff,

v.

K. ALLISON,

Defendants.

Case No. 1:12-cv-00600 AWI JLT (PC)

**FINDINGS AND RECOMMENDATIONS
TO DISMISS PLAINTIFF'S
COMPLAINT FOR FAILURE TO
COMPLY WITH COURT ORDERS**

(Doc. 22).

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. On February 17, 2012, Plaintiff filed a motion to proceed in forma pauperis, (Doc. 6). On April 20, 2012, the Magistrate Judge issued findings and recommendations to deny Plaintiff's application to proceed in forma pauperis, pursuant to 28 U.S.C. § 1915(g), as Plaintiff had previously filed at least three actions that were dismissed as either frivolous. (Doc. 15).

The Order Adopting the Magistrate Judge's Findings and Recommendations was issued and served on July 6, 2012. (Doc. 22). The Order Adopting the Findings and Recommendations ordered Plaintiff to pay the filing fee in full within 14 days of service of the Court's order and cautioned him that the failure to comply would result in a dismissal of his entire matter. (Doc. 22 at 3). Despite the Court's order, Plaintiff has failed to pay the filing fee in full as required. For the reasons set forth below, the Court recommends Plaintiff's action be dismissed.

1 **I. Discussion and Analysis**

2 “District courts have inherent power to control their dockets,” and in exercising that
3 power, a court may impose sanctions including dismissal of an action. Thompson v. Housing
4 Authority of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action with
5 prejudice, based on a party’s failure to prosecute an action or failure to obey a court order, or
6 failure to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9 th Cir. 2995)
7 (dismissal for failure to comply with local rules); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th
8 Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint);
9 Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply
10 with a court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for
11 failure to prosecute and to comply with local rules).

12 In determining whether to dismiss an action for failure to prosecute, failure to obey a court
13 order, or failure to comply with the Local Rules, the Court must consider several factors,
14 including: “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to
15 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
16 disposition of cases on their merits; and (5) the availability of less drastic sanctions.” Henderson,
17 779 F.2d at 1423-24; *see also* Ferdik, 963 F.2d at 1260-61; Thomson, 782 F.2d at 831.

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

25 In its July 6, 2012 order, the Court warned Plaintiff that if he failed to comply with the
26 order, his entire matter would be dismissed. (Doc. 22 at 3). Thus, Plaintiff had adequate warning
27 that dismissal would result from his noncompliance with the Court’s order, and this satisfies the
28 requirement that the Court consider less drastic measures than dismissal of the action. Ferdik,

1 963 F.2d at 1262; Henderson, 779 F.2d at 1424. Moreover, no lesser sanction is feasible given
2 the Court's inability to communicate with Plaintiff.

3 Accordingly, **IT IS HEREBY RECOMMENDED:**

- 4 1. This action be **DISMISSED WITHOUT PREJUDICE**; and
- 5 2. The Clerk of Court be directed to close this action because this order terminates
6 the action in its entirety.

7 These findings and recommendations are submitted to the United States District Judge
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the
9 Local Rules of Practice for the United States District Court, Eastern District of California. Within
10 14 days after being served with these findings and recommendations, Plaintiff may file written
11 objections with the Court. Such a document should be captioned "Objections to Magistrate
12 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within
13 the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
14 F.2d 1153 (9th Cir. 1991).

15
16 IT IS SO ORDERED.

17 Dated: August 1, 2012

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

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