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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DENO EUGENE WOODIS,
Plaintiff,
v.
ANDRE KING.
Defendant.

Case No. 1:13 -cv-01136-LJO-MJS (PC)
**FINDINGS AND RECOMMENDATIONS
FOR DISMISSAL OF ACTION FOR
FAILURE TO OBEY A COURT ORDER
AND FAILURE TO PROSECUTE**
(ECF No. 4)
**OBJECTIONS DUE WITHIN FOURTEEN
DAYS**

Plaintiff Deno Eugene Woodis is a civil detainee proceeding pro se in a civil rights action filed on July 19, 2013 pursuant to 42 U.S.C. § 1983.¹ The Court ordered Plaintiff to submit, not later than August 29, 2013, a completed and signed application to proceed in forma pauperis or pay the \$400.00 filing fee for this action. The August 29, 2013 deadline passed without Plaintiff filing an application to proceed in forma pauperis, paying the \$400 filing fee, or seeking an extension of time to do so.

Plaintiff was then ordered to show cause not later than September 30, 2013, why this action should not be dismissed for failure to comply with the Court's above-described order. (ECF No. 4.) Plaintiff has not responded.

¹ Individuals detained pursuant to California Welfare and Institutions Code § 6600 et seq. are civil detainees and are not prisoners within the meaning of the Prison Litigation Reform Act. Page v. Torrey, 201 F.3d 1136, 1140 (9th Cir. 2000).

1 Local Rule 110 provides that “failure of counsel or of a party to comply with these
2 Rules or with any order of the Court may be grounds for imposition by the Court of any
3 and all sanctions . . . within the inherent power of the Court.” District courts have the
4 inherent power to control their dockets and “in the exercise of that power, they may
5 impose sanctions including, where appropriate . . . dismissal of a case.” Thompson v.
6 Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with
7 prejudice, based on a party’s failure to prosecute, failure to obey a court order, or failure
8 to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)
9 (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-
10 61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of
11 a complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for
12 failure to comply with local rule requiring pro se plaintiffs to keep court apprised of
13 address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal
14 for failure to comply with a court order); Henderson v. Duncan, 779 F.2d 1421, 1424
15 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

16 In determining whether to dismiss an action for lack of prosecution, failure to
17 obey a court order, or failure to comply with local rules, the Court must consider several
18 factors: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s
19 need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
20 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
21 alternatives. Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone,
22 833 F.2d at 130; Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

23 In the instant case, the public’s interest in expeditiously resolving this litigation
24 and the Court’s interest in managing its docket weigh in favor of dismissal. The third
25 factor, risk of prejudice to Defendants, also weighs in favor of dismissal, since a
26 presumption of injury arises from the occurrence of unreasonable delay in prosecuting
27 an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor --
28

1 public policy favoring disposition of cases on their merits -- is greatly outweighed by the
2 factors in favor of dismissal discussed herein. Finally, as for the availability of lesser
3 sanctions, at this stage in the proceedings there is little available which would constitute
4 a satisfactory lesser sanction while preserving scarce Court resources. Plaintiff has not
5 paid the filing fee for this action and is likely unable to pay, making monetary sanctions
6 of little use, and given the early stage of these proceedings, the preclusion of evidence
7 or witnesses is not available.

8 Having balanced these factors, the undersigned finds they weigh in favor of
9 dismissal and accordingly HEREBY RECOMMENDS that this action be dismissed
10 without prejudice based on Plaintiff's failure obey the Court's orders and failure to
11 prosecute.

12 These findings and recommendations are submitted to the United States District
13 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).
14 Within fourteen (14) days after being served with these findings and recommendations,
15 any party may file written objections with the Court and serve a copy on all parties. Such
16 a document should be captioned "Objections to Magistrate Judge's Findings and
17 Recommendations."

18 The parties are advised that failure to file objections within the specified time may
19 waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153,
20 1156 (9th Cir. 1991).

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23 IT IS SO ORDERED.

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25 Dated: October 15, 2013

1s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE