

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JESSIE JAMES WOODS,

Plaintiff,

v.

SCOTT TURPIN,

Defendant.

Case No. 1:13-cv-01803 LJO-DLB PC

FINDINGS AND RECOMMENDATIONS
REGARDING DISMISSAL OF ACTION FOR
FAILURE TO FOLLOW COURT ORDER

THIRTY DAY OBJECTION DEADLINE

Plaintiff Jessie James Woods (“Plaintiff”) is a California state prisoner proceeding pro se in this civil action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on October 15, 2013. The action was transferred to this Court on November 6, 2013.

On November 7, 2013, the Court issued an order directing Plaintiff to either file an application to proceed in forma pauperis, or pay the filing fee, within 45 days of the date of service of the order. Over 45 days have passed and Plaintiff has not complied with the order or otherwise contacted the Court.¹

Local Rule 110 provides that “failure of counsel or of a party to comply with these Local Rules or with any order of the Court may be grounds for the imposition by the Court of any and all sanctions . . . within the inherent power of the Court.” District courts have the inherent power to control their dockets and “in the exercise of that power, they may impose sanctions including, where

¹ Plaintiff filed a notice of change of address on December 9, 2013. The November 7, 2013, however, was not returned as undeliverable.

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

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

17 In the instant case, the Court finds that the public’s interest in expeditiously resolving this
18 litigation and the Court’s interest in managing the docket weigh in favor of dismissal. This action
19 has been pending since October 15, 2013, and Plaintiff has not complied with the November 7, 2013,
20 order to file an application to proceed in forma pauperis, or pay the filing fee. The third factor, risk
21 of prejudice to defendants, also weighs in favor of dismissal, since a presumption of injury arises
22 from the occurrence of unreasonable delay in prosecuting an action. *Anderson v. Air West*, 542 F.2d
23 522, 524 (9th Cir. 1976). The fourth factor -- public policy favoring disposition of cases on their
24 merits -- is greatly outweighed by the factors in favor of dismissal discussed herein.

25 Finally, a court’s warning to a party that his failure to obey the court’s order will result in
26 dismissal satisfies the “consideration of alternatives” requirement. *Ferdik*, 963 F.2d at 1262;
27 *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424. The Court’s November 7, 2013, order
28 expressly stated: “Failure to comply with this order will result in dismissal of this action.” Thus,

1 Plaintiff had adequate warning that dismissal would result from his noncompliance with the Court's
2 order.

3 The Court also notes that a civil action may not proceed absent the submission of either the
4 filing fee or a completed application to proceed in forma pauperis. 28 U.S.C. §§ 1914, 1915. Based
5 on Plaintiff's failure to comply with the Court's order, dismissal of this action is appropriate. *In re*
6 *Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1226 (9th Cir. 2006);
7 Local Rule 110.

8 **FINDINGS AND RECOMMENDATIONS**

9 The Court therefore recommends that this action be dismissed for Plaintiff's failure to follow
10 a Court order and failure to prosecute.

11 These Findings and Recommendations will be submitted to the United States District Judge
12 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)
13 days after being served with these Findings and Recommendations, Plaintiff may file written
14 objections with the court. The document should be captioned "Objections to Magistrate Judge's
15 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
16 specified time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d
17 1153 (9th Cir. 1991).

18
19
20 IT IS SO ORDERED.

21 Dated: January 10, 2014

/s/ Dennis L. Beck
22 UNITED STATES MAGISTRATE JUDGE