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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID HARRING, KENNETH
HARRING,

Plaintiff,

v.

CHRISTOPHER MARTENS,

Defendants.

Case No. 1: 14-cv-0310-AWI-BAM

**FINDINGS AND RECOMMENDATION
RECOMMENDING DISMISSAL OF THIS
ACTION**

Plaintiffs David Haring and Kenneth Haring¹ (“Plaintiffs”), appearing *pro se* and *in forma pauperis*, filed the instant complaint on November 27, 2013, seeking monetary damages and other relief. The Court screened Plaintiffs’ Complaint on April 16, 2014, and found that it failed to state a cognizable claim, but gave Plaintiffs an opportunity to file an amended complaint on or before May 19, 2014. (Doc. 7). Plaintiff David Haring filed a motion for an extension of time on May 19, 2014 (Doc. 8), which the Court granted (Doc. 9). Plaintiffs were to file their amended complaint by June 24, 2014. (Doc. 9).² To date, Plaintiffs have not filed their amended

¹ The Court notes that Kenneth Haring is not a party to this action. He has not submitted an application to proceed *in forma pauperis* or paid his filing fee, nor has he signed the complaint in this matter. Further, as a non-attorney, David Haring may not represent Kenneth Haring. *See Simon v. Hartford Life, Inc.*, 546 F.3d 661, 664 (9th Cir. 2008) (privilege to represent oneself *pro se* provided by 28 U.S.C. § 1654 is personal to litigant and does not extend to other parties/entities); *Johns v. Cnty of San Diego*, 114 F.3d 874, 876 (9th Cir. 1997) (non-attorney may appear *pro se* on own behalf, but has no authority to appear as an attorney for others than himself). Thus, any claims alleged by Kenneth Haring should be DISMISSED.

² In the order granting David Haring’s request for an extension of time, the Court ordered Plaintiff Kenneth

1 complaint or an additional request for an extension of time to do so.

2 DISCUSSION

3 Local Rule 110 provides that “a failure of counsel or of a party to comply with these Local
4 Rules or with any order of the Court may be grounds for the imposition by the Court of any and
5 all sanctions . . . within the inherent power of the Court. District courts have the inherent power
6 to control their dockets and “in the exercise of that power, they may impose sanctions including,
7 where appropriate . . . dismissal of a case.” *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th
8 Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute
9 an action, failure to obey a court order, or failure to comply with local rules. *See, e.g., Ghazali v.*
10 *Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v.*
11 *Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order
12 requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988)
13 (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprized
14 of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for
15 failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986)
16 (dismissal for lack of prosecution and failure to comply with local rules). In determining whether
17 to dismiss an action for lack of prosecution, failure to obey a court order, or failure to comply
18 with local rules, the court must consider several factors: (1) the public’s interest in expeditious
19 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the
20 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the
21 availability of less drastic alternatives. *Ghazali*, 46 F.3d at 53; *Ferdik*, 963 F.2d at 1260-61;
22 *Malone*, 833 F.2d at 130; *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24.

23 In the instant case, the Court finds that the public’s interest in expeditiously resolving this
24 litigation and the Court’s interest in managing the docket weigh in favor of dismissal because
25 there is no indication that Plaintiffs intend to prosecute this action. The third factor, risk of
26 prejudice to defendants, also weighs in favor of dismissal because a presumption of injury arises
27 from any unreasonable delay in prosecuting an action. *Anderson v. Air West*, 542 F.2d 522, 524

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Harring to file a separate complaint along with the filing fee or an application to proceed in forma pauperis. (Doc. 9).

1 (9th Cir. 1976). The fourth factor, public policy favoring disposition of cases on their merits, is
2 greatly outweighed by the factors in favor of dismissal. Finally, a court's warning to a party that
3 his failure to obey the court's order will result in dismissal satisfies the "consideration of
4 alternatives" requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 at 132-33; *Henderson*, 779
5 F.2d at 1424. The Court's order requiring Plaintiffs to file an amended complaint was clear that
6 dismissal would result from non-compliance with the Court's order. (Doc. 7, pg. 7).

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8 **RECOMMENDATION**

9 Based on the above, **IT IS HEREBY RECOMMENDED** that this action be
10 **DISMISSED** for Plaintiffs' failure to comply with a court order and that the Clerk of the Court
11 be directed to close this action.

12 These findings and recommendations are submitted to the United States District Judge
13 pursuant to 28 U.S.C. § 636(b)(1)(B). Within fifteen (15) days after the date of this Finding and
14 Recommendation, the parties may file written objections with the Court. The document should
15 be captioned "Objections to Magistrate Judge's Finding and Recommendation." The parties are
16 advised that failure to file objections within the specified time may waive the right to appeal the
17 District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

18 IT IS SO ORDERED.

19 Dated: June 26, 2014

20 /s/ Barbara A. McAuliffe
21 UNITED STATES MAGISTRATE JUDGE
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