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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

YOUNG YIL JO,  
Plaintiff,  
v.  
SIX UNKNOWN AGENTS,  
Defendants.

CASE NO. 1:14-cv-00320-AWI-MJS (PC)  
**FINDINGS AND RECOMMENDATION TO  
DISMISS ACTION WITHOUT PREJUDICE  
FOR FAILURE TO OBEY A COURT  
ORDER AND FAILURE TO FILE  
APPLICATION TO PROCEED IN FORMA  
PAUPERIS OR PAY FILING FEE**  
**(ECF No. 7)**  
**FOURTEEN (14) DAY OBJECTION  
DEADLINE**

Plaintiff is a federal detainee proceeding pro se in this purported civil rights action brought pursuant to 42 U.S.C. § 1983.

On March 13, 2014, the Court struck Plaintiff's complaint because it was unsigned, and noted that the complaint failed to state a cognizable claim. (ECF No. 2.) Plaintiff was ordered to file a signed complaint within thirty days. Plaintiff simultaneously was ordered to file an application to proceed in forma pauperis or pay the \$400 filing fee for this action. Plaintiff was warned that failure to comply would result in dismissal of the action. (Id.)

Plaintiff appealed. (ECF Nos. 3 & 5.) His appeals were not processed by the Ninth

1 Circuit Court of Appeals, and a search of the Ninth Circuit's docket does not reveal any  
2 appeal by Plaintiff relating to the instant action. Presumably, Plaintiff's appeal was not  
3 processed based on the Ninth Circuit's May 13, 2014 order enjoining Plaintiff from filing  
4 further civil actions naming the same defendants and/or raising the same allegations as  
5 those in actions previously filed and dismissed in the district courts, and directing this  
6 court to reject any related notices of appeal. See In re: Young Yil Jo, No. 13-80149 (9th  
7 Cir. May 13, 2014).

8 The action has been pending for over a year without any operative complaint and  
9 without Plaintiff submitting an application to proceed in forma pauperis or paying the  
10 applicable filing fee. Accordingly, on May 15, 2015, the Court ordered Plaintiff to show  
11 cause why the action should not be dismissed. (ECF No. 7.) Plaintiff did not respond to  
12 the order to show cause.

13 Local Rule 110 provides that "failure of counsel or of a party to comply with these  
14 Rules or with any order of the Court may be grounds for imposition by the Court of any  
15 and all sanctions . . . within the inherent power of the Court." District courts have the  
16 inherent power to control their dockets and "in the exercise of that power, they may  
17 impose sanctions including, where appropriate default or dismissal." Thompson v.  
18 Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based  
19 on a party's failure to prosecute, failure to obey a court order, or failure to comply with  
20 local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for  
21 noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir.  
22 1992) (dismissal for failure to comply with an order requiring amendment of a complaint);  
23 Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply  
24 with local rule requiring pro se plaintiffs to keep court apprised of address); Malone v.  
25 U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply  
26 with a court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986)  
27 (dismissal for lack of prosecution and failure to comply with local rules).

28 In determining whether to dismiss an action for lack of prosecution, failure to obey

1 a court order, or failure to comply with local rules, the Court must consider several  
2 factors: (1) the public's interest in expeditious resolution of litigation, (2) the Court's need  
3 to manage its docket, (3) the risk of prejudice to the defendants, (4) the public policy  
4 favoring disposition of cases on their merits, and (5) the availability of less drastic  
5 alternatives. Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone, 833  
6 F.2d at 130; Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

7 In the instant case, the public's interest in expeditiously resolving this litigation  
8 and the Court's interest in managing its docket weigh in favor of dismissal. The third  
9 factor, risk of prejudice to Defendants, also weighs in favor of dismissal, since a  
10 presumption of injury arises from the occurrence of unreasonable delay in prosecuting  
11 this action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor –  
12 public policy favoring disposition of cases on their merits – is greatly outweighed by the  
13 factors in favor of dismissal discussed herein. Finally, as for the availability of lesser  
14 sanctions, at this stage in the proceedings there is little available which would constitute  
15 a satisfactory lesser sanction while preserving scarce Court resources. Plaintiff is likely  
16 unable to pay monetary sanctions, making such sanctions of little use.

17 Based on the foregoing, it is HEREBY RECOMMENDED that the action be  
18 dismissed, without prejudice, for failure to obey a court order and failure to file an  
19 application to proceed in forma pauperis or pay the applicable filing fee.

20 These Findings and Recommendations are submitted to the United States District  
21 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within  
22 fourteen (14) days after being served with these Findings and Recommendations, any  
23 party may file written objections with the Court and serve a copy on all parties. Such a  
24 document should be captioned "Objections to Magistrate Judge's Findings and  
25 Recommendations." Any reply to the objections shall be served and filed within fourteen  
26 (14) days after service of the objections. The parties are advised that failure to file  
27 objections within the specified time may result in the waiver of rights on appeal.

1 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923  
2 F.2d 1391, 1394 (9th Cir. 1991)).

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4 IT IS SO ORDERED.

5 Dated: June 22, 2015

1st Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE

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