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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

DANIEL PHELPS,

Plaintiff,

v.

ELIZABETH VAN BIBBER,

Defendants.

No. 1: 14-cv-722-LJO-GSA

**FINDINGS AND RECOMMENDATIONS  
REGARDING DISMISSAL OF THIS  
ACTION FOR FAILURE TO OBEY A  
COURT ORDER**

**INTRODUCTION**

Plaintiff, Daniel Phelps (“Plaintiff”), is proceeding pro se and filed a complaint, along with an application to proceed in forma pauperis. (Docs. 1 and 2). A review of the application revealed that Plaintiff did not complete the application form properly. On June 11, 2014, this Court issued an order requiring that no later than July 7, 2014, Plaintiff file and submit a completed application to proceed in forma pauperis, or in the alternative, pay the \$400.00 filing fee. To date, Plaintiff has not complied with the Court’s order.

**DISCUSSION**

Local Rule 11 110 provides that “a failure of counsel or of a party to comply with these

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

10 Accordingly, the Court HEREBY RECOMMENDS that this action be DISMISSED for  
11 Plaintiff's failure to comply with a court order.

12 This Findings and Recommendation is submitted to the Honorable Lawrence J. O'Neill  
13 United States District Court Judge, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B).  
14 Within **fourteen (14)** days after being served with a copy, Plaintiff may file written objections  
15 with the Court. Such a document should be captioned "Objections to Magistrate Judge's Findings  
16 and Recommendation." The Court will then review the Magistrate Judge's ruling pursuant to 28  
17 U.S.C. ' 636(b)(1)(C). Plaintiff is advised that failure to file objections within the specified time  
18 may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.  
19 1991).  
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23 IT IS SO ORDERED.

24 Dated: August 4, 2014

/s/ Gary S. Austin  
25 UNITED STATES MAGISTRATE JUDGE  
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