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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

STEVEN PHILPOTT,  
Plaintiff,  
v.  
AUDREY KING, et al.,  
Defendants.

CASE NO. 1:14-cv-01766-LJO-MJS (PC)  
**FINDINGS AND RECOMMENDATION TO  
DISMISS ACTION WITHOUT PREJUDICE  
FOR FAILURE SUBMIT FILING FEE OR  
APPLICATION TO PROCEED IN FORMA  
PAUPERIS, FAILURE TO OBEY A COURT  
ORDER, AND FAILURE TO PROSECUTE  
(ECF Nos. 11 & 13)  
FOURTEEN (14) DAY OBJECTION  
DEADLINE**

Plaintiff is a civil detainee proceeding pro se in this civil rights action brought pursuant to 42 U.S.C. § 1983. On November 20, 2014, Plaintiff was ordered to submit an application to proceed in forma pauperis on the appropriate form or to pay the applicable filing fee in full within thirty days. (ECF No. 7.) Plaintiff failed to comply and, on February 3, 2015, Plaintiff was ordered to show cause why the action should not be dismissed. (ECF No. 11.) Plaintiff filed no response to the order to show cause.

Further, on March 10, 2015, Plaintiff's complaint was screened and dismissed for failure to state a claim, and he was ordered to file a petition for a writ of habeas corpus or a notice of voluntary dismissal within thirty days. (ECF No. 13.) The thirty-day deadline passed without Plaintiff filing either a habeas petition or notice of voluntary dismissal, or seeking an extension of time to do so.

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, default or dismissal.” Thompson v.  
6 Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based  
7 on a party’s failure to prosecute, failure to obey a court order, or failure to comply with  
8 local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for  
9 noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir.  
10 1992) (dismissal for failure to comply with an order requiring amendment of a complaint);  
11 Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply  
12 with local rule requiring pro se plaintiffs to keep court apprised of address); Malone v.  
13 U.S. Postal Service, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to comply  
14 with a court order); Henderson v. Duncan, 779 F.2d 1421, 1424-25 (9th Cir. 1986)  
15 (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 obey  
17 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 need  
19 to manage its docket, (3) the risk of prejudice to the defendants, (4) the public policy  
20 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.

22 In the instant case, the public’s interest in expeditiously resolving this litigation  
23 and the Court’s interest in managing its docket weigh in favor of dismissal. The third  
24 factor, risk of prejudice to Defendants, also weighs in favor of dismissal, since a  
25 presumption of injury arises from the occurrence of unreasonable delay in prosecuting  
26 this action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor –  
27 public policy favoring disposition of cases on their merits – is greatly outweighed by the  
28 factors in favor of dismissal discussed herein. Finally, as for the availability of lesser

1 sanctions, at this stage in the proceedings there is little available which would constitute  
2 a satisfactory lesser sanction while preserving scarce Court resources. Plaintiff has not  
3 paid the filing fees in this action and likely is unable to pay, making monetary sanctions  
4 of little use.

5 Based on the foregoing, it is HEREBY RECOMMENDED that the action be  
6 dismissed, without prejudice, for failure to submit the applicable filing fee or an  
7 application to proceed in forma pauperis, failure to obey a court order and failure to  
8 prosecute.

9 These Findings and Recommendations are submitted to the United States District  
10 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within  
11 fourteen (14) days after being served with these Findings and Recommendations, any  
12 party may file written objections with the Court and serve a copy on all parties. Such a  
13 document should be captioned "Objections to Magistrate Judge's Findings and  
14 Recommendations." Any reply to the objections shall be served and filed within fourteen  
15 (14) days after service of the objections. The parties are advised that failure to file  
16 objections within the specified time may result in the waiver of rights on appeal.  
17 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923  
18 F.2d 1391, 1394 (9th Cir. 1991)).

19  
20 IT IS SO ORDERED.

21 Dated: April 27, 2015

/s/ Michael J. Seng  
22 UNITED STATES MAGISTRATE JUDGE