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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
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9 HOWARD SIPE,

10 Plaintiff,

11 v.

12 AUDREY KING, et al.,

13 Defendants.
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CASE NO. 1:14-cv-02016-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. 17 & 19)

**FOURTEEN (14) DAY OBJECTION
DEADLINE**
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17 Plaintiff is a civil detainee proceeding pro se in this civil rights action brought
18 pursuant to 42 U.S.C. § 1983. On February 10, 2015, Plaintiff was ordered to submit an
19 application to proceed in forma pauperis on the appropriate form or to pay the applicable
20 filing fee in full within thirty days. (ECF No. 17.) Plaintiff did not comply.

21 Further, on March 10, 2015, Plaintiff's complaint was screened and dismissed for
22 failure to state a claim, and he was ordered to file a petition for a writ of habeas corpus
23 or a notice of voluntary dismissal within thirty days. (ECF No. 19.) The thirty-day
24 deadline passed without Plaintiff filing either a habeas petition or notice of voluntary
25 dismissal, or seeking an extension of time to do so.

26 Local Rule 110 provides that "failure of counsel or of a party to comply with these
27 Rules or with any order of the Court may be grounds for imposition by the Court of any
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1 and all sanctions . . . within the inherent power of the Court.” District courts have the
2 inherent power to control their dockets and “in the exercise of that power, they may
3 impose sanctions including, where appropriate, default or dismissal.” Thompson v.
4 Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based
5 on a party’s failure to prosecute, failure to obey a court order, or failure to comply with
6 local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for
7 noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir.
8 1992) (dismissal for failure to comply with an order requiring amendment of a complaint);
9 Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply
10 with local rule requiring pro se plaintiffs to keep court apprised of address); Malone v.
11 U.S. Postal Service, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to comply
12 with a court order); Henderson v. Duncan, 779 F.2d 1421, 1424-25 (9th Cir. 1986)
13 (dismissal for lack of prosecution and failure to comply with local rules).

14 In determining whether to dismiss an action for lack of prosecution, failure to obey
15 a court order, or failure to comply with local rules, the Court must consider several
16 factors: (1) the public’s interest in expeditious resolution of litigation, (2) the Court’s need
17 to manage its docket, (3) the risk of prejudice to the defendants, (4) the public policy
18 favoring disposition of cases on their merits, and (5) the availability of less drastic
19 alternatives. Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423.

20 In the instant case, the public’s interest in expeditiously resolving this litigation
21 and the Court’s interest in managing its docket weigh in favor of dismissal. The third
22 factor, risk of prejudice to Defendants, also weighs in favor of dismissal, since a
23 presumption of injury arises from the occurrence of unreasonable delay in prosecuting
24 this action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor –
25 public policy favoring disposition of cases on their merits – is greatly outweighed by the
26 factors in favor of dismissal discussed herein. Finally, as for the availability of lesser
27 sanctions, at this stage in the proceedings there is little available which would constitute
28 a satisfactory lesser sanction while preserving scarce Court resources. Plaintiff has not

1 paid the filing fees in this action and likely is unable to pay, making monetary sanctions
2 of little use.

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

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

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18 IT IS SO ORDERED.

19 Dated: April 27, 2015

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE