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6	UNITED STATES DISTRICT COURT	
7	EASTERN DISTRICT OF CALIFORNIA	
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9	TERRENCE BUTLER,	CASE NO. 1:14-cv-02021-LJO-MJS (PC)
10	Plaintiff,	FINDINGS AND RECOMMENDATION TO
11	ν.	DISMISS ACTION WITHOUT PREJUDICE FOR FAILURE SUBMIT FILING FEE OR
12	AUDREY KING, et al.,	APPLICATION TO PROCEED IN FORMA PAUPERIS, FAILURETO OBEY A COURT
13	Defendants.	ORDER, AND FAILURE TO PROSECUTE
14		(ECF Nos. 6 & 9)
15 16		FOURTEEN (14) DAY OBJECTION DEADLINE
17	Plaintiff is a civil detainee proceeding pro se in this civil rights action brought	
18	pursuant to 42 U.S.C. § 1983. On January 6, 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. 6.) Plaintiff did not comply.	
21	Additionally, on March 10, 2015, Plaintiff's complaint was screened and dismissed	
22	for failure to state a claim, and he was ordered to file a petition for a writ of habeas	
23	corpus or a notice of voluntary dismissal within thirty days. (ECF No. 9.) 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.	

Local Rule 110 provides that "failure of counsel or of a party to comply with these
 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).

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

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

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

18 IT IS SO ORDERED.

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Dated: <u>April 27, 20</u>15

1st Michael J. Seng

UNITED STATES MAGISTRATE JUDGE

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