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

ROBERT KIBLER,
Plaintiff,
v.
UNKNOWN,
Defendant.

1:15-cv-00658-LJO-BAM
**FINDINGS AND RECOMMENDATIONS
REGARDING DISMISSAL OF THIS
ACTION FOR FAILURE TO OBEY A
COURT ORDER**

INTRODUCTION

Plaintiff Robert Kibler (“Plaintiff”), proceeding pro se, initiated this action on April 19, 2015, but did not submit an application to proceed in forma pauperis or, alternatively, pay the \$400.00 filing fee. (Doc. 1.) On May 6, 2015, the Court ordered Plaintiff to submit an application to proceed in forma pauperis or pay the \$400.00 filing fee no later than June 22, 2015. (Doc. 2.) To date, Plaintiff has not complied with the Court’s order.

DISCUSSION

Local Rule 110 provides that “[f]ailure of counsel or of a party to comply with these Rules or with any order of the Court may be grounds for the imposition by the Court of any and all sanctions . . . within the inherent power of the Court.” District courts have the inherent power to

1 control their dockets and “[i]n the exercise of that power they may impose sanctions including,
2 where appropriate, . . . dismissal.” *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th Cir.
3 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an
4 action, failure to obey a court order, or failure to comply with local rules. *See, e.g., Ghazali v.*
5 *Moran*, 46 F.3d 52, 53 54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v.*
6 *Bonzelet*, 963 F.2d 1258, 1260 61 (9th Cir. 1992) (dismissal for failure to comply with an order
7 requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440 41 (9th Cir. 1988)
8 (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised of
9 address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure
10 to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986)
11 (dismissal for lack of prosecution and failure to comply with local rules). In determining whether
12 to dismiss an action for lack of prosecution, failure to obey a court order, or failure to comply
13 with local rules, the court must consider several factors: (1) the public’s interest in expeditious
14 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the
15 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the
16 availability of less drastic alternatives. *Ghazali*, 46 F.3d at 53; *Ferdik*, 963 F.2d at 1260-61;
17 *Malone*, 833 F.2d at 130; *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423.

18 In the instant case, the Court finds that the public’s interest in expeditiously resolving this
19 litigation and the Court’s interest in managing the docket weigh in favor of dismissal because
20 there is no indication that the Plaintiff intends to prosecute this action. The third factor, risk of
21 prejudice to defendants, also weighs in favor of dismissal because a presumption of injury arises
22 from any unreasonable delay in prosecuting an action. *Anderson v. Air West*, 542 F.2d 522, 524
23 (9th Cir. 1976). The fourth factor, public policy favoring disposition of cases on their merits, is
24 greatly outweighed by the factors in favor of dismissal. Finally, a court’s warning to a party that
25 his failure to obey the court’s order will result in dismissal satisfies the “consideration of
26 alternatives” requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 at 132-33; *Henderson*, 779
27 F.2d at 1424. The Court’s order requiring Plaintiff to file a completed in forma pauperis
28 application, or alternatively, to pay the filing fee, was clear that a recommendation for dismissal

1 would result from non-compliance with the Court's order.

2 **RECOMMENDATION**

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

5 These Findings and Recommendations will be submitted to the United States District
6 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
7 **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may
8 file written objections with the Court. The document should be captioned "Objections to
9 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
10 objections within the specified time may result in the waiver of the "right to challenge the
11 magistrate's factual findings" on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014)
12 (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

13
14 IT IS SO ORDERED.

15 Dated: June 26, 2015

16 /s/ Barbara A. McAuliffe
17 UNITED STATES MAGISTRATE JUDGE