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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JEROME IRELAND, JR.,
Plaintiff,
v.
ANDRE SMITH, et al.,
Defendants.

CASE NO. 1:15-cv-01230-LJO-MJS
**FINDINGS AND RECOMMENDATION TO
DISMISS ACTION WITHOUT PREJUDICE
FOR FAILURE TO SUBMIT FILING FEE,
AND FAILURE TO OBEY A COURT
ORDER**
(ECF Nos. 4 & 6)
**FOURTEEN (14) DAY OBJECTION
DEADLINE**

Plaintiff is proceeding pro se in this action. On August 13, 2015, Plaintiff's motion for in forma pauperis was denied, and Plaintiff was ordered to submit an amended application by September 14, 2015. (ECF No. 4.) Plaintiff filed an amended application. (ECF No. 5.) On August 24, 2015, the Court denied Plaintiff's amended application for in forma pauperis and ordered Plaintiff to pay the filing fee within thirty days or the action would be dismissed. (ECF No. 6.) Plaintiff failed to comply with the Court's Order.

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 imposition by the Court of any and all sanctions . . . within the inherent power of the Court." "District courts have inherent power to control their dockets [and] . . . [i]n the exercise of that power, they may impose sanctions including, where appropriate, default or dismissal." *Thompson v.*

1 *Housing Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with
2 prejudice, based on a party's failure to prosecute, failure to obey a court order, or failure
3 to comply with local rules. See, e.g., *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995)
4 (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-
5 63 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of a
6 complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure
7 to comply with local rule requiring pro se plaintiffs to keep court apprised of address);
8 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to
9 comply with a court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424-25 (9th Cir.
10 1986) (dismissal for lack of prosecution and failure to comply with local rules).

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

17 In the instant case, the public's interest in expeditiously resolving this litigation
18 and the Court's interest in managing its docket weigh in favor of dismissal. The third
19 factor, risk of prejudice to Defendants, also weighs in favor of dismissal, since a
20 presumption of injury arises from the occurrence of unreasonable delay in prosecuting
21 this action. *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor –
22 public policy favoring disposition of cases on their merits – is greatly outweighed by the
23 factors in favor of dismissal discussed herein. Finally, as for the availability of lesser
24 sanctions, at this stage in the proceedings there is little available which would constitute
25 a satisfactory lesser sanction while preserving scarce Court resources.

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Based on the foregoing, it is HEREBY RECOMMENDED that the action be dismissed, without prejudice, for failure to submit the applicable filing fee and failure to obey a court order.

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

IT IS SO ORDERED.

Dated: October 30, 2015

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE