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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BILLY DRIVER,

 Plaintiff,

 v.

U.S. SPECIAL MASTER, et al.,

 Defendants.

Case No. 1:17-cv-00202-DAD-BAM (PC)

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF CASE
WITHOUT PREJUDICE FOR FAILURE TO
PAY FILING FEE AND FAILURE TO OBEY
COURT ORDER

(ECF No. 9)

FOURTEEN (14) DAY DEADLINE

Plaintiff Billy Driver (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on February 13, 2017. (ECF No. 1.) On the same day, Plaintiff filed an application to proceed in forma pauperis under 28 U.S.C. § 1915. (ECF No. 2.) On February 22, 2017, the Court issued findings and recommendations recommending that Plaintiff’s application to proceed in forma pauperis be denied and that he be required to pay the \$400.00 filing fee in full to proceed with this action. (ECF No. 7.) Plaintiff timely filed objections on March 9, 2017. (ECF No. 8.)

On May 2, 2017, the assigned District Judge issued an order adopting the findings and recommendations over Plaintiff’s objections, and ordering Plaintiff to pay the \$400.00 filing fee in full within forty-five (45) days. (ECF No. 9). In that order, Plaintiff was warned that if he failed to pay the filing fee within the specified time, the action would be dismissed. (*Id.*) The

1 relevant time period for Plaintiff to respond to the Court’s order has expired, and Plaintiff has not
2 yet paid the filing fee.

3 District courts have the inherent power to control their dockets and “[i]n the exercise of
4 that power they may impose sanctions including, where appropriate, . . . dismissal.” Thompson v.
5 Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with
6 prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure
7 to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53–54 (9th Cir. 1995)
8 (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260–61 (9th
9 Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint);
10 Malone v. U.S. Postal Serv., 833 F.2d 128, 130–33 (9th Cir. 1987) (dismissal for failure to
11 comply with court order).

12 In determining whether to dismiss an action, the Court must consider several factors:
13 (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its
14 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
15 cases on their merits; and (5) the availability of less drastic sanctions. Henderson v. Duncan, 779
16 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988); see also In
17 re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1226 (9th Cir. 2006)
18 (standards governing dismissal for failure to comply with court orders). These factors guide a
19 court in deciding what to do and are not conditions that must be met in order for a court to take
20 action. Id. (citation omitted).

21 A civil action may not proceed absent the submission of either the filing fee or an
22 application to proceed in forma pauperis. 28 U.S.C. §§ 1914, 1915. As Plaintiff’s application to
23 proceed in forma pauperis has been denied, he has failed to pay the filing fee, and has not
24 otherwise responded to the Court’s order, the Court is left with no alternative but to dismiss this
25 action. This action has been pending since February 2017, and can proceed no further without
26 Plaintiff’s cooperation and compliance with the Court’s order. Moreover, the matter cannot
27 simply remain idle on the Court’s docket, unprosecuted, awaiting Plaintiff’s compliance.

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1 Accordingly, the Court HEREBY RECOMMENDS that this action be DISMISSED,
2 without prejudice, for Plaintiff's failure to comply with the Court's order of May 2, 2017, (ECF
3 No. 9), and failure to pay the filing fee.

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

12
13 IT IS SO ORDERED.

14 Dated: June 30, 2017

14 /s/ Barbara A. McAuliffe
15 UNITED STATES MAGISTRATE JUDGE