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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MOSES FLORES,
Plaintiff,
v.
WESPAK,
Defendant.

Case No. 1:17-cv-0326 AWI-BAM

**FINDINGS AND RECOMMENDATIONS
REGARDING DISMISSAL OF THIS
ACTION FOR FAILURE TO OBEY A
COURT ORDER**

On March 6, 2017, Plaintiff Moses Flores, a Nevada state prisoner proceeding *pro se*, filed suit pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* On March 13, 2017, Plaintiff was ordered to fill out an in forma pauperis (“IFP”) application, or pay the \$400.00 filing fee, within thirty (30) days, or on or before April 13, 2017. To date, Plaintiff has not filed an IFP application, or paid the filing fee as ordered.

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 imposition by the Court of any and all sanctions . . . within the inherent power of the Court.” District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate, . . . dismissal.” *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th Cir.

1 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an
2 action, failure to obey a court order, or failure to comply with local rules. *See, e.g., Ghazali v.*
3 *Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v.*
4 *Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order
5 requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988)
6 (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised of
7 address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure
8 to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986)
9 (dismissal for lack of prosecution and failure to comply with local rules). In determining whether
10 to dismiss an action for lack of prosecution, failure to obey a court order, or failure to comply
11 with local rules, the court must consider several factors: (1) the public's interest in expeditious
12 resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the
13 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the
14 availability of less drastic alternatives. *Ghazali*, 46 F.3d at 53; *Ferdik*, 963 F.2d at 1260-61;
15 *Malone*, 833 F.2d at 130; *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24.

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

27 CONCLUSION AND RECOMMENDATION

28 Accordingly, the Court HEREBY RECOMMENDS that this action be DISMISSED for

1 Plaintiff's failure to comply with a court order.

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

10
11 IT IS SO ORDERED.

12 Dated: April 21, 2017

/s/ Barbara A. McAuliffe
13 UNITED STATES MAGISTRATE JUDGE

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