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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JASON LAMAR HALL,
Plaintiff,

v.

VERNON NAKAHARA, et al.,
Defendants.

Case No. 1:17-cv-00481-LJO-SAB

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSING ACTION
WITHOUT PREJUDICE FOR FAILURE TO
PAY FILING FEE

(ECF No. 4)

OBJECTIONS DUE WITHIN TWENTY-
ONE DAYS

I.

PROCEDURAL BACKGROUND

Plaintiff Jason Lamar Hall is appearing pro se in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On April 6, 2017, the Magistrate Judge filed a findings and recommendations which recommended denying Plaintiff’s application to proceed without prepayment of fees. On May 12, 2017, the District Judge adopted the findings and recommendations and Plaintiff was ordered to pay the filing fee in this action within forty-five days. Plaintiff was advised that if he did not pay the filing fee in compliance with the order, this action would be dismissed. More than forty-five days have passed and Plaintiff has not paid the filing fee or otherwise responded to the May 12, 2017 order.

1 **II.**

2 **LEGAL STANDARD**

3 Local Rule 110 provides that “[f]ailure of counsel or of a party to comply with these
4 Rules or with any order of the Court may be grounds for imposition by the Court of any and all
5 sanctions . . . within the inherent power of the Court.” The Court has the inherent power to
6 control its docket and may, in the exercise of that power, impose sanctions where appropriate,
7 including dismissal of the action. Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir.
8 2000).

9 A court may dismiss an action based on a party’s failure to prosecute an action, failure to
10 obey a court order, or failure to comply with local rules. See, e.g. Ghazali v. Moran, 46 F.3d 52,
11 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d
12 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order to file an amended
13 complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to
14 comply with local rule requiring pro se plaintiffs to keep court apprised of address); Malone v.
15 United States Postal Serv., 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply
16 with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack
17 of prosecution and failure to comply with local rules).

18 In determining whether to dismiss an action for failure to comply with a pretrial order,
19 the Court must weigh “(1) the public’s interest in expeditious resolution of litigation; (2) the
20 court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
21 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
22 sanctions.” In re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1226
23 (9th Cir. 2006) (internal quotations and citations omitted). These factors guide a court in
24 deciding what to do, and are not conditions that must be met in order for a court to take action.
25 Id. (citation omitted).

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1 **III.**

2 **DISCUSSION**

3 In this instance, the public's interest in expeditious resolution of the litigation and the
4 Court's need to manage its docket weigh in favor of dismissal. Id. Plaintiff was ordered to pay
5 the filing fee within forty five days of May 12, 2017. Plaintiff has neither paid the filing fee nor
6 otherwise responded to the Court's order. Plaintiff's failure to comply with the orders of the
7 Court hinders the Court's ability to move this action towards disposition, and indicates that
8 Plaintiff does not intend to diligently litigate this action.

9 Since it appears that Plaintiff does not intend to litigate this action diligently there arises a
10 rebuttable presumption of prejudice to the defendants in this action. In re Eisen, 31 F.3d 1447,
11 1452-53 (9th Cir. 1994). The risk of prejudice to the defendants also weighs in favor of
12 dismissal.

13 The public policy in favor of deciding cases on their merits is greatly outweighed by the
14 factors in favor of dismissal. It is Plaintiff's responsibility to move this action forward. This
15 action can proceed no further without Plaintiff's cooperation and compliance with the order at
16 issue, and the action cannot simply remain idle on the Court's docket, unprosecuted. In this
17 instance, the fourth factor does not outweigh Plaintiff's failure to comply with the Court's orders.

18 Finally, a court's warning to a party that their failure to obey the court's order will result
19 in dismissal satisfies the "consideration of alternatives" requirement. Ferdik, 963 F.2d at 1262;
20 Malone, 833 F.2d at 132-33; Henderson, 779 F.2d at 1424. The Court's May 12, 2017 order
21 requiring Plaintiff to pay the filing fee expressly stated that: "If Plaintiff fails to pay the filing fee
22 in compliance with this order, this action shall be dismissed" (ECF No. 4 at 2:8-9.) Thus, Plaintiff
23 had adequate warning that dismissal would result from his noncompliance with the Court's order
24 and his failure pay the filing fee.

25 **III.**

26 **CONCLUSION AND RECOMMENDATION**

27 Plaintiff has failed to pay the filing fee in this action in compliance with the Court's May
28 12, 2017 order.

1 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed without
2 prejudice for Plaintiff's failure to pay the filing fee.

3 These findings and recommendations are submitted to the district judge assigned to this
4 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within twenty-
5 one (21) days of service of this recommendation, Plaintiff may file written objections to these
6 findings and recommendations with the Court. Such a document should be captioned
7 "Objections to Magistrate Judge's Findings and Recommendations." The district judge will
8 review the magistrate judge's findings and recommendations pursuant to 28 U.S.C. §
9 636(b)(1)(C). Plaintiff is advised that failure to file objections within the specified time may
10 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)
11 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

12
13 IT IS SO ORDERED.

14
15 Dated: July 20, 2017


UNITED STATES MAGISTRATE JUDGE