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8 **UNITED STATES DISTRICT COURT**

9 EASTERN DISTRICT OF CALIFORNIA

10
11 DARREN VINCENT FORD,

12 Plaintiff,

13 v.

14 AUDREY KING, et al.,

15 Defendants.

Case No. 1:17-cv-00822-DAD-BAM (PC)

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

(ECF No. 5)

FOURTEEN (14) DAY DEADLINE

16
17 Plaintiff Darren Vincent Ford (“Plaintiff”) is a state prisoner proceeding pro se in this civil
18 rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on June 15, 2017. (ECF
19 No. 1.) On June 21, 2017, the Court issued an order directing Plaintiff to submit an application to
20 proceed in forma pauperis or pay the filing fee within forty-five (45) days. (ECF No. 5.) The
21 deadline to submit the application or pay the filing fee has expired, and Plaintiff has not complied
22 with this order.

23 District courts have the inherent power to control their dockets and “[i]n the exercise of
24 that power they may impose sanctions including, where appropriate, . . . dismissal.” Thompson v.
25 Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with
26 prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure
27 to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53–54 (9th Cir. 1995)
28 (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260–61 (9th

1 Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint);
2 Malone v. U.S. Postal Serv., 833 F.2d 128, 130-33 (9th Cir. 1987) (dismissal for failure to
3 comply with court order).

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

13 The Court finds that the public's interest in expeditious resolution of litigation and the
14 Court's need to manage its docket weigh in favor of dismissal. This action has been pending
15 since June 2017 and can proceed no further without Plaintiff's cooperation and compliance with
16 the Court's orders. Moreover, the matter cannot simply remain idle on the Court's docket,
17 unprosecuted, awaiting Plaintiff's compliance. Indeed, a civil action may not proceed absent the
18 submission of either the filing fee or an application to proceed in forma pauperis. 28 U.S.C.
19 §§ 1914, 1915. As for the risk of prejudice, the law presumes prejudice from unreasonable delay.
20 In re PPA, 460 F.3d at 1227–28. Regarding the fourth factor, while public policy favors
21 disposition on the merits and therefore weighs against dismissal, it is Plaintiff's own conduct
22 which is at issue here and which has stalled the case. Id. at 1228. Finally, there are no alternative
23 sanctions which are satisfactory. A monetary sanction has little to no benefit in a case in which
24 Plaintiff has ceased responding to the Court's orders. Further, Plaintiff was warned that his
25 failure to submit an application to proceed in forma pauperis or pay the filing fee would result in
26 dismissal of this action. (ECF No. 5.) A warning that the failure to obey a court order will result
27 in dismissal can meet the consideration of alternatives requirement. Id. at 1229.

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1 Accordingly, it is HEREBY RECOMMENDED that this action be dismissed, without
2 prejudice, for Plaintiff's failure to comply with the Court's orders.

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

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12 IT IS SO ORDERED.

13 Dated: August 16, 2017

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