

1
2
3
4 UNITED STATES DISTRICT COURT
5 EASTERN DISTRICT OF CALIFORNIA
6

7 DOMINGO ZAPATA,

8 Plaintiff,

9 v.

10 JOHN KUNKEL, TONI JONES, KEN
11 MOORE, and FERNANDO CHAVEZ,

12 Defendants.

Case No. 1:17-cv-1319 LJO-BAM

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

13
14 Plaintiff Domingo Zapata, appearing pro se, filed this civil action on October 2, 2017.
15 (ECF No. 1.) On October 25, 2017, Plaintiff was ordered to fill out a long form in forma
16 pauperis (“IFP”) application, or pay the \$400.00 filing fee, within thirty (30) days, or on or before
17 November 15, 2017. To date, Plaintiff has not filed the proper IFP application, or paid the filing
18 fee as ordered.

19 **DISCUSSION**

20 Local Rule 110 provides that “[f]ailure of counsel or of a party to comply with these Rules
21 or with any order of the Court may be grounds for imposition by the Court of any and all
22 sanctions . . . within the inherent power of the Court.” District courts have the inherent power to
23 control their dockets and “[i]n the exercise of that power, they may impose sanctions including,
24 where appropriate, . . . dismissal.” *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th Cir.
25 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an
26 action, failure to obey a court order, or failure to comply with local rules. *See, e.g., Ghazali v.*
27 *Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v.*
28 *Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order

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

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

23 CONCLUSION AND RECOMMENDATION

24 Accordingly, the Court HEREBY RECOMMENDS that this action be DISMISSED for
25 Plaintiff's failure to comply with a court order.

26 These Findings and Recommendations will be submitted to the United States District
27 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
28 **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may

1 file written objections with the Court. The document should be captioned “Objections to
2 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file
3 objections within the specified time may result in the waiver of the “right to challenge the
4 magistrate’s factual findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014)
5 (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

6
7 IT IS SO ORDERED.

8 Dated: December 8, 2017

/s/ Barbara A. McAuliffe
9 UNITED STATES MAGISTRATE JUDGE
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28