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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

WILLIAM CECIL THORNTON,  
  
  Plaintiff,  
  
                        v.  
  
CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION,  
  
  Defendant.

Case No. 1:17-cv-01463-BAM (PC)  
  
FINDINGS AND RECOMMENDATIONS TO  
DISMISS ACTION, WITHOUT PREJUDICE,  
FOR FAILURE TO OBEY A COURT ORDER  
AND FAILURE TO PROSECUTE  
  
(ECF No. 17)  
  
**FOURTEEN (14) DAY DEADLINE**

Plaintiff William Cecil Thornton (“Plaintiff”) is a former state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983.

On April 16, 2018, the Court issued an order directing Plaintiff to submit a completed and signed application to proceed *in forma pauperis* for a non-prisoner, or in the alternative, to pay the \$400.00 filing fee for this action. (ECF No. 17.) The deadline for Plaintiff’s application or payment has expired, and Plaintiff has failed to comply with the Court’s order or otherwise communicate with the Court regarding this action.

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. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure

1 to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53–54 (9th Cir. 1995)  
2 (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260–61 (9th  
3 Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint);  
4 Malone v. U.S. Postal Serv., 833 F.2d 128, 130–33 (9th Cir. 1987) (dismissal for failure to  
5 comply with court order).

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

15 The Court finds that the public’s interest in expeditious resolution of litigation and the  
16 Court’s need to manage its docket weigh in favor of dismissal. This action has been pending  
17 since October 2017 and can proceed no further without Plaintiff’s cooperation and compliance  
18 with the Court’s orders. Moreover, the matter cannot simply remain idle on the Court’s docket,  
19 unprosecuted, awaiting Plaintiff’s compliance. Indeed, a civil action may not proceed absent the  
20 submission of either the filing fee or an application to proceed *in forma pauperis*. 28 U.S.C.  
21 §§ 1914, 1915. As for the risk of prejudice, the law presumes prejudice from unreasonable delay.  
22 In re PPA, 460 F.3d at 1227–28. Regarding the fourth factor, while public policy favors  
23 disposition on the merits and therefore weighs against dismissal, it is Plaintiff’s own conduct  
24 which is at issue here and which has stalled the case. Id. at 1228. Finally, there are no alternative  
25 sanctions which are satisfactory. A monetary sanction has little to no benefit in a case in which  
26 Plaintiff has ceased responding to the Court’s orders. Further, Plaintiff was warned that his  
27 failure to submit an application to proceed *in forma pauperis* or pay the filing fee would result in  
28 dismissal of this action. (ECF No. 17, p. 2.) A warning that the failure to obey a court order will

1 result in dismissal can meet the consideration of alternatives requirement. In re PPA, 460 F.3d at  
2 1229.

3 Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a  
4 district judge to this action.

5 Furthermore, it is HEREBY RECOMMENDED that this action be dismissed, without  
6 prejudice, for Plaintiff's failure to pay the filing fee or file an application to proceed *in forma*  
7 *pauperis*, failure to obey Court orders, and failure to prosecute.

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

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17 IT IS SO ORDERED.

18 Dated: May 30, 2018

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

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