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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

KIFAH MUHAMMADU AL-FUDUYI,  
Plaintiff,  
v.  
CALIFORNIA CITY FACILITY, et al.,  
Defendants.

CASE No. 1:17-cv-01469-MJS (PC)

**ORDER DIRECTING CLERK'S OFFICE  
TO ASSIGN MATTER TO A DISTRICT  
JUDGE**

**FINDINGS AND RECOMMENDATION TO  
DISMISS ACTION FOR FAILURE TO  
STATE A CLAIM, FAILURE TO OBEY  
COURT ORDER AND FAILURE TO  
PROSECUTE**

(ECF No. 14, 16)

**FOURTEEN (14) DAY OBJECTION  
DEADLINE**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983.

On January 22, 2018, the Court screened Plaintiff's complaint, concluded it stated no cognizable claims, and ordered Plaintiff to either file an amended complaint or a notice of voluntary dismissal, or to notify the Court that he wished to stand on his complaint as written. (ECF No. 14.) The thirty day response deadline passed without any response from Plaintiff. Accordingly, the undersigned ordered Plaintiff to show cause why the action should not be dismissed for failure to state a claim, failure to obey a court,

1 and failure to prosecute. (ECF No. 16.) Plaintiff did not respond and the time for doing so  
2 has passed.

3 Local Rule 110 provides that “failure 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  
5 and all sanctions . . . within the inherent power of the Court.” District courts have the  
6 inherent power to control their dockets and “in the exercise of that power, they may  
7 impose sanctions including, where appropriate . . . dismissal of a case.” Thompson v.  
8 Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based  
9 on a party’s failure to prosecute, failure to obey a court order, or failure to comply with  
10 local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for  
11 noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir.  
12 1992) (dismissal for failure to comply with an order requiring amendment of a complaint);  
13 Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply  
14 with local rule requiring pro se plaintiffs to keep court apprised of address); Malone v.  
15 U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply  
16 with a court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986)  
17 (dismissal for lack of prosecution and failure to comply with local rules).

18 In determining whether to dismiss an action for lack of prosecution, failure to obey  
19 a court order, or failure to comply with local rules, the Court must consider several  
20 factors: (1) the public’s interest in expeditious resolution of litigation, (2) the Court’s need  
21 to manage its docket, (3) the risk of prejudice to the defendants, (4) the public policy  
22 favoring disposition of cases on their merits, and (5) the availability of less drastic  
23 alternatives. Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone, 833  
24 F.2d at 130; Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

25 In the instant case, the public’s interest in expeditiously resolving this litigation  
26 and the Court’s interest in managing its docket weigh in favor of dismissal. The third  
27 factor, risk of prejudice to Defendants, also weighs in favor of dismissal, since a  
28 presumption of injury arises from the occurrence of unreasonable delay in prosecuting

1 this action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor –  
2 public policy favoring disposition of cases on their merits – is greatly outweighed by the  
3 factors in favor of dismissal discussed herein. Finally, as for the availability of lesser  
4 sanctions, at this stage in the proceedings there is little available which would constitute  
5 a satisfactory lesser sanction while preserving scarce Court resources. Plaintiff has not  
6 paid the filing fee for this action and is likely unable to pay, making monetary sanctions  
7 of little use.

8 Based on the foregoing, it is HEREBY RECOMMENDED that the action be  
9 dismissed, for failure to state a claim, failure to obey a court order, and failure to  
10 prosecute.

11  
12 These Findings and Recommendation are submitted to the United States District  
13 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within  
14 fourteen days after being served with these Findings and Recommendation, any party  
15 may file written objections with the Court and serve a copy on all parties. Such a  
16 document should be captioned “Objections to Magistrate Judge’s Findings and  
17 Recommendation.” Any reply to the objections shall be served and filed within fourteen  
18 days after service of the objections. The parties are advised that failure to file objections  
19 within the specified time may result in the waiver of rights on appeal. Wilkerson v.  
20 Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391,  
21 1394 (9th Cir. 1991)).

22  
23 IT IS SO ORDERED.

24 Dated: April 6, 2018

/s/ Michael J. Seng  
25 UNITED STATES MAGISTRATE JUDGE