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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CLEMENTE GONZALEZ,

Plaintiff,

v.

SELMA POLICE DEPARTMENT, et al.,

Defendants.

Case No. 1:18-cv-00602-DAD-SAB

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSING ACTION
FOR FAILURE TO PAY FILING FEE

OBJECTIONS DUE WITHIN TWENTY
DAYS

I.

BACKGROUND

Plaintiff Clemente Gonzalez, proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983 on May 2, 2018. Along with his complaint, Plaintiff filed an application to proceed without prepayment of fees in this action. (ECF No. 2.) The undersigned found that Plaintiff’s application was inadequate to determine if Plaintiff was entitled to proceed in this action without paying the filing fee. (ECF. No. 3.) Plaintiff was ordered to file a long form application within twenty days of May 3, 2018. (Id.)

Plaintiff filed a long forma application on May 16, 2018. (ECF No. 6.) After review of the application, the undersigned ordered Plaintiff to file supplemental briefing addressing why he did not include unemployment income that had been included in the prior application, his spouse’s income, and the monthly expenses claimed. (ECF No. 5.) Plaintiff filed a response on

1 May 29, 2018. (ECF No. 6.)

2 Upon review of Plaintiff's response, the Court found that Plaintiff had not demonstrated
3 entitlement to proceed without prepayment of fees in this action and a findings and
4 recommendations was filed on June 1, 2018 recommending that the application to proceed
5 without prepayment of fees be denied. (ECF No. 7.) Plaintiff was ordered to file any objections
6 to the findings and recommendations within thirty days. (Id.) Plaintiff did not file an objection.
7 On August 13, 2018, District Judge Dale D. Drodz adopted the findings and recommendations.
8 (ECF No. 8.) Plaintiff's application to proceed without prepayment of fees was denied; and
9 Plaintiff was ordered to pay the filing fee within thirty days of August 13, 2018. (Id.) More than
10 thirty days have passed and Plaintiff has not paid the filing fee or otherwise responded to the
11 August 13, 2018 order.

12 II.

13 DISCUSSION

14 Local Rule 110 provides that “[f]ailure of counsel or of a party to comply with these
15 Rules or with any order of the Court may be grounds for imposition by the Court of any and all
16 sanctions . . . within the inherent power of the Court.” The Court has the inherent power to
17 control its docket and may, in the exercise of that power, impose sanctions where appropriate,
18 including dismissal of the action. Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir.
19 2000).

20 A court may dismiss an action based on a party's failure to prosecute an action, failure to
21 obey a court order, or failure to comply with local rules. See, e.g. Ghazali v. Moran, 46 F.3d 52,
22 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d
23 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order to file an amended
24 complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to
25 comply with local rule requiring pro se plaintiffs to keep court apprised of address); Malone v.
26 United States Postal Serv., 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply
27 with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack
28 of prosecution and failure to comply with local rules).

1 Plaintiff was ordered to pay the filing fee within thirty days of the August 13, 2018 order.
2 In the order, Plaintiff was advised that failure to comply with the order would result in this action
3 being dismissed. (ECF No. 8 at 2.) More than thirty have passed and Plaintiff has not paid the
4 filing fee in this action, or otherwise responded to the Court's order. Plaintiff has failed to
5 comply with the order requiring him to pay the filing fee. For this reason, the Court recommends
6 that this action be dismissed.

7 **III.**

8 **CONCLUSION AND RECOMMENDATION**

9 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed without
10 prejudice for Plaintiff's failure to pay the filing fee in compliance with the August 13, 2018
11 order.

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

21 IT IS SO ORDERED.

22 Dated: September 19, 2018

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25 UNITED STATES MAGISTRATE JUDGE
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