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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTHONY RAY MINOR,
Plaintiff,
v.
MARGARET MIMMS,
Defendant.

1:22-cv-01612-HBK (PC)
ORDER TO ASSIGN TO DISTRICT JUDGE

FINDINGS AND RECOMMENDATIONS
TO DISMISS ACTION FOR FAILURE TO
OBEY COURT ORDER AND FAILURE
TO PROSECUTE

14-DAY DEADLINE

Plaintiff Anthony Ray Minor initiated this action by filing a pro se civil rights complaint under 42 U.S.C. § 1983 on December 15, 2022, while detained in the Fresno County Jail. (Doc. No. 1). For the reasons set forth below, the undersigned recommends the District Court dismiss this action for Plaintiff's failure to comply with a court order and/or prosecute this action.

BACKGROUND

Plaintiff accompanied his pro se complaint with an application to proceed *in forma pauperis*. (Doc. No. 3). On January 4, 2023, the Court denied Plaintiff's application to proceed *in forma pauperis* without prejudice because it did not comply with § 1915(a)(1)(2) and ordered Plaintiff to resubmit a completed application or pay the \$402.00 filing fee within 21 days. (Doc. No. 5). The Court warned Plaintiff a recommendation to dismiss the case for failure to prosecute

1 and/or comply with a court order would issue if he failed to timely comply with the Court's
2 Order. (*Id.*, at ¶ 5). The Order was mailed to Plaintiff and not returned. (*See* docket entry dated
3 January 4, 2023). On February 15, 2023, after Plaintiff failed to timely comply with the January
4 4, 2023 Order, the Court issued a Show Cause Order. (Doc. No. 6). The Show Cause Order was
5 returned to the Court as “undeliverable.” (*See* docket entry dated March 16, 2023).

6 **APPLICABLE LAW AND ANALYSIS**

7 **A. Legal Standard**

8 Federal Rule of Civil Procedure 41(b) permits the court to involuntarily dismiss an action
9 when a litigant fails to prosecute an action or fails to comply with other Rules or with a court
10 order. *See* Fed. R. Civ. P. 41(b); *see Applied Underwriters v. Lichtenegger*, 913 F.3d 884, 889
11 (9th Cir. 2019) (citations omitted). Similarly, the Local Rules, corresponding with Federal Rule
12 of Civil Procedure 11, provide, “[f]ailure of counsel or of a party to comply with ... any order of
13 the Court may be grounds for the imposition by the Court of any and all sanctions ... within the
14 inherent power of the Court.” E.D. Cal. L.R. 110. “District courts have inherent power to control
15 their dockets” and, in exercising that power, may impose sanctions, including dismissal of an
16 action. *Thompson v. Housing Auth., City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A
17 court may dismiss an action based on a party’s failure to prosecute an action, obey a court order,
18 or comply with local rules. *See, e.g., Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
19 (dismissal for failure to comply with a court order to amend a complaint); *Malone v. U.S. Postal*
20 *Service*, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to comply with a court order);
21 *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and
22 to comply with local rules).

23 In determining whether to dismiss an action, the Court must consider several factors:
24 (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its
25 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
26 cases on their merits; and (5) the availability of less drastic sanctions. *Henderson*, 779 F.2d at
27 1423; *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).

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1 **B. Analysis**

2 The undersigned considers each of the above-stated factors and concludes dismissal is
3 warranted in this case. The January 4, 2023 explained to Plaintiff why his application to proceed
4 *in forma pauperis* was deficient and advised Plaintiff that he would need to submit a completed
5 application to proceed *in forma pauperis* or pay the filing fee in order within 21 days to proceed
6 with this action. (Doc. 5 at 1, ¶ 2). To date Plaintiff has failed to comply with the January 4,
7 2023 Order and time for doing so has expired.

8 As to the first factor, the expeditious resolution of litigation is deemed to be in the public
9 interest, satisfying the first factor. *Yourish v. California Amplifier*, 191 F.3d 983, 990-91 (9th Cir.
10 1999). Turning to the second factor, the Court’s need to efficiently manage its docket cannot be
11 overstated. This Court has “one of the heaviest caseloads in the nation,” and due to unfilled
12 judicial vacancies, which is further exacerbated by the COVID-19 pandemic, operates under a
13 declared judicial emergency. *See Amended Standing Order in Light of Ongoing Judicial*
14 *Emergency in the Eastern District of California*. The Court’s time is better spent on its other
15 matters than needlessly consumed managing a case with a recalcitrant litigant. Because the Court
16 cannot effectively manage its docket if Plaintiff ceases litigating her case. Thus, the Court finds
17 that both the first and second factors weigh in favor of dismissal.

18 Delays inevitably have the inherent risk that evidence will become stale or witnesses’
19 memories will fade or be unavailable and can prejudice a defendant, thereby satisfying the third
20 factor. *See Sibron v. New York*, 392 U.S. 40, 57 (1968). Thus, the third factor, risk of prejudice
21 to defendant, also weighs in favor of dismissal since a presumption of injury arises from the
22 occurrence of unreasonable delay in prosecuting an action. *Anderson v. Air W.*, 542 F.2d 522,
23 524 (9th Cir. 1976). Plaintiff’s inaction amounts to an unreasonable delay in prosecuting this
24 action, weighing in favor of dismissal for a risk of prejudice to defendants.

25 Finally, the fourth factor usually weighs against dismissal because public policy favors
26 disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002). However,
27 “this factor lends little support to a party whose responsibility it is to move a case toward
28 disposition on the merits but whose conduct impedes progress in that direction,” which is the case

1 here. *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1228 (9th
2 Cir. 2006) (citation omitted). Indeed, “trial courts do not have time to waste on multiple failures
3 by aspiring litigants to follow the rules and requirements of our courts.” *Pagtalunan*, 291 F.3d at
4 644. Here Plaintiff has not paid the filing fee nor submitted a proper application to proceed *in*
5 *forma pauperis* in this action.

6 Finally, the Court’s warning to a party that failure to obey the court’s order will result in
7 dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262;
8 *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424. The January 4, 2023 Order expressly
9 warned Plaintiff that his failure to comply with the Court’s Order would result in a
10 recommendation of dismissal of this action. (Doc. No. 5 at 2, ¶4). Thus, Plaintiff had adequate
11 warning that dismissal could result from his noncompliance. The Court attempted to afford
12 Plaintiff an opportunity to cure his noncompliance, but the Court’s Show Cause Order was
13 returned as undeliverable. Thus, it would be futile to issue any further orders to try to gain
14 Plaintiff’s compliance. Finally, the instant dismissal is a dismissal *without* prejudice, which is a
15 lesser sanction than a dismissal with prejudice, thereby addressing the fifth factor.

16 After considering the factors set forth *supra* and binding case law, the undersigned
17 recommends dismissal, without prejudice, under Fed. R. Civ. P. 41 and Local Rule 110.

18 ACCORDINGLY, it is **ORDERED**:

19 The Clerk of Court shall assign this case to a district judge for consideration of these
20 Findings and Recommendations.

21 It is further **RECOMMENDED**:

22 This action be **DISMISSED** without prejudice for Plaintiff’s failure to obey court order
23 and failure to prosecute this action, all motions be terminated and the case closed.


24 **NOTICE**

25 These Findings and Recommendations will be submitted to the United States District
26 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). **Within 14 days**
27 **of the date of service** of these Findings and Recommendations, Plaintiff may file written
28 objections with the Court. The document should be captioned, “Objections to Magistrate Judge’s

1 Findings and Recommendations.” Plaintiff’s failure to file objections within the specified time
2 may result in waiver of her rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.
3 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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Dated: April 4, 2023


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE