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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ALONZO WARREN, JR.,

Plaintiff,

v.

STANISLAUS COUNTY SUPERIOR
COURT, et al.,

Defendants.

Case No. 1:23-cv-00405-SAB

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSING ACTION
FOR FAILURE TO COMPLY WITH
COURT ORDER, FAILURE TO
PROSECUTE, AND FAILURE TO PAY
FILING FEE

ORDER DIRECTING CLERK OF COURT
TO RANDOMLY ASSIGN DISTRICT
JUDGE

(ECF No. 6)

**OBJECTIONS DUE WITHIN FOURTEEN
DAYS**

On March 13, 2023, Alonzo Warren, Jr., (“Plaintiff”), currently incarcerated at the Stanislaus Public Safety Center in Modesto, California, and proceeding *pro se*, filed this civil rights action pursuant to 42 U.S.C. § 1983. (ECF No. 1.) The action was initially filed in the Sacramento Division, but on March 17, 2023, the action was transferred to the Fresno Division. (ECF No. 4.) Along with the complaint, Plaintiff filed an application to proceed without prepayment of fees in this action. (ECF No. 2.) On March 21, 2023, the Court found that Plaintiff’s application was not properly completed, containing no trust fund account or certification from an authorized officer, leaving the Court unable to determine if Plaintiff is

1 entitled to proceed without prepayment of fees in this action. (ECF No. 6.) The Court ordered
2 the application to proceed *in forma pauperis* denied without prejudice, and ordered Plaintiff to
3 file an application to proceed *in forma pauperis* which includes a certified copy of his trust
4 account statement showing transactions for the past six months, within thirty (30) days from the
5 date of service of the order. (Id.) The Court also warned Plaintiff that the failure to do so in
6 compliance with the order would result in the recommendation that this action be dismissed.
7 Allowing for additional time for mailing by the incarcerated Plaintiff, the deadline to file a
8 proper application to proceed *in forma pauperis* has now expired and Plaintiff has not responded
9 to the Court's order.

10 Local Rule 110 provides that “[f]ailure of counsel or of a party to comply with these
11 Rules or with any order of the Court may be grounds for imposition by the Court of any and all
12 sanctions . . . within the inherent power of the Court.” The Court has the inherent power to
13 control its docket and may, in the exercise of that power, impose sanctions where appropriate,
14 including dismissal of the action. Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir.
15 2000); Ready Transp., Inc. v. AAR Mfg., Inc., 627 F.3d 402, 404 (9th Cir. 2010).

16 A court may dismiss an action based on a party's failure to prosecute an action, failure to
17 obey a court order, or failure to comply with local rules. See, e.g. Ghazali v. Moran, 46 F.3d 52,
18 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d
19 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order to file an amended
20 complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to
21 comply with local rule requiring pro se plaintiffs to keep court apprised of address); Malone v.
22 United States Postal Serv., 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply
23 with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack
24 of prosecution and failure to comply with local rules).

25 In determining whether to dismiss an action for failure to comply with a pretrial order,
26 the Court must weigh “(1) the public's interest in expeditious resolution of litigation; (2) the
27 court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
28 policy favoring disposition of cases on their merits; and (5) the availability of less drastic

1 sanctions.” In re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1226
2 (9th Cir. 2006); Thompson v. Hous. Auth. of City of Los Angeles, 782 F.2d 829, 831 (9th Cir.
3 1986). These factors guide a court in deciding what to do, and are not conditions that must be
4 met in order for a court to take action. In re Phenylpropanolamine (PPA) Products Liability
5 Litigation, 460 F.3d at 1226.

6 In this instance the public’s interest in expeditious resolution of the litigation and the
7 Court’s need to manage its docket weigh in favor of dismissal. Id. Plaintiff has neither filed a
8 properly completed application to proceed *in forma pauperis*, paid the filing fee, nor otherwise
9 responded to the Court’s order. Plaintiff’s failure to comply with the orders of the Court hinders
10 the Court’s ability to move this action towards disposition, and indicates that Plaintiff does not
11 intend to diligently litigate this action.

12 Since it appears that Plaintiff does not intend to litigate this action diligently there arises a
13 rebuttable presumption of prejudice to the defendants in this action. In re Eisen, 31 F.3d 1447,
14 1452-53 (9th Cir. 1994). The risk of prejudice to the defendants also weighs in favor of
15 dismissal.

16 The public policy in favor of deciding cases on their merits is outweighed by the factors
17 in favor of dismissal. It is Plaintiff’s responsibility to move this action forward. This action can
18 proceed no further without Plaintiff’s cooperation and compliance with the order at issue, and the
19 action cannot simply remain idle on the Court’s docket, unprosecuted. In this instance, the
20 fourth factor does not outweigh Plaintiff’s failure to comply with the Court’s orders.

21 Finally, a court’s warning to a party that their failure to obey the court’s order will result
22 in dismissal satisfies the “consideration of alternatives” requirement. Ferdik, 963 F.2d at 1262;
23 Malone, 833 at 132-33; Henderson, 779 F.2d at 1424. The Court’s March 21, 2023, order
24 expressly stated: “Failure to file a complete application to proceed *in forma pauperis* in
25 compliance with this order will result in the recommendation that this action be dismissed.”
26 (ECF No. 6 at 2.) Thus, Plaintiff had adequate warning that dismissal of this action would result
27 from noncompliance with the Court’s order. **Further, Plaintiff may still file an application to**
28 **proceed *in forma pauperis* during the objection period and the Court will consider the**

1 **application.**

2 Accordingly, IT IS HEREBY RECOMMENDED that this action be DISMISSED for
3 Plaintiff's failure to pay the filing fee or file an application to proceed *in forma pauperis* in this
4 action, failure to abide by the Court's order, and failure to prosecute.

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

14 IT IS FURTHER ORDERED that the Clerk of the Court be DIRECTED to randomly
15 assign a District Judge to this action.

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17 IT IS SO ORDERED.

18 Dated: May 4, 2023


UNITED STATES MAGISTRATE JUDGE

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