

1 The Court specifically advised Plaintiff that if he failed to timely respond to the Order or seek an
2 extension of time to do so, the undersigned would recommend the Court dismiss this case for his
3 failure to comply with a court order and/or prosecute this action.” (*Id.* at 1). Plaintiff filed a
4 “motion in equity” seeking exemption from the filing fee requirement and the Prison Litigation
5 Reform Act (“PLRA”) on the basis that his incarceration is illegitimate. (Doc. No. 4). On
6 December 4, 2024, the Court denied the motion but afforded Plaintiff until December 20, 2024 to
7 either pay the filing fee or file an application to proceed *in forma pauperis*. (Doc. No. 5). The
8 Court again expressly warned Plaintiff that if he failed to either pay the \$405.00 filing fee or
9 submit a complete application to proceed *in forma pauperis*, the undersigned will recommend the
10 District Court dismiss the action as a sanction for Plaintiff’s failure to prosecute and comply with
11 court orders consistent with Local Rule 110. (*Id.* at 3 ¶ 4).² As of the date of these Findings and
12 Recommendations, Plaintiff has not paid the \$405 filing fee nor applied to proceed *in forma*
13 *pauperis* and the time to do so has expired. (*See* docket).

14 **APPLICABLE LAW**

15 **A. Plaintiff’s is Required to Pay the Filing Fee**

16 All parties instituting any civil action, suit, or proceeding in a district court of the United
17 States, except an application for writ of habeas corpus, must pay a filing fee of \$405.00. *See* 28
18 U.S.C. § 1914(a). An action may proceed despite a plaintiff’s failure to prepay the entire fee only
19 if he is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*,
20 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).
21 The fee is not waived for prisoners, however. If granted leave to proceed IFP, a prisoner
22 nevertheless remains obligated to pay the entire fee in “increments” or “installments,” *Bruce v.*
23 *Samuels*, 577 U.S. 82, 84 (2016); *Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015),
24 regardless of whether his action is dismissed for other reasons. *See* 28 U.S.C. § 1915(b)(1), (2);
25 *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

26
27 ² On December 20, 2024, the Court again denied Plaintiff’s request to correct his “prisoner” status, taking
28 judicial notice of Plaintiff’s Western District of New York conviction and his present incarceration as
satisfying the statutory definition of “prisoner” as set forth in the PLRA. 42 U.S.C. § 1997e(h). (Doc. No.
9).

1 The Court advised Plaintiff that for this case to proceed further, he must pay the \$405.00
2 filing fee or submit an IFP application within 30 days of receiving the November 15, 2024 Order.
3 (See Doc. No. 3). The Court then afforded Plaintiff until December 20, 2024 to pay the filing fee
4 or submit an IFP application. (Doc. No. 5). Because Plaintiff has failed to either pay the filing
5 fee of \$405.00 or submit a IFP application, Plaintiff’s case may be dismissed without prejudice.
6 See *Escobedo v. Applebees*, 787 F.3d 1226, 1228 (9th Cir. 2015) (finding that a district court
7 “will be free to dismiss the complaint” if the filing fee is not paid or application to proceed *in*
8 *forma pauperis* is not granted); see also *In re Perroton*, 958 F.2d 889, 890 (9th Cir. 1992)
9 (affirming dismissal of pro se litigant’s claim for failure to pay required filing fees).

10 **B. Failure to Prosecute**

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

26 In determining whether to dismiss an action, the Court must consider several factors:
27 (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its
28 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of

1 cases on their merits; and (5) the availability of less drastic sanctions. *Henderson*, 779 F.2d at
2 1423; *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).

3 After considering each of the above-stated factors, the undersigned concludes dismissal
4 without prejudice is warranted in this case. As to the first factor, the expeditious resolution of
5 litigation is deemed to be in the public interest, satisfying the first factor. *Yourish v. California*
6 *Amplifier*, 191 F.3d 983, 990-91 (9th Cir. 1999).

7 Turning to the second factor, this Court’s need to efficiently manage its docket cannot be
8 overstated. This Court has one of the heaviest caseloads in the nation, and due to the delay in
9 filling judicial vacancies, which was further exacerbated by the COVID-19 pandemic, operated
10 under a declared judicial emergency through May 2, 2021. *See In re Approval of the Judicial*
11 *Emergency Declared in the Eastern District of California*, 956 F.3d 1175 (9th Cir. 2020). This
12 Court’s time is better spent on its other matters than needlessly consumed managing a case with a
13 recalcitrant litigant. The Court cannot effectively manage its docket when a litigant ceases to
14 litigate his/her case or respond to a court order. Thus, the Court finds that the second factor
15 weighs in favor of dismissal.

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

23 The fourth factor usually weighs against dismissal because public policy favors the
24 disposition of cases on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002).
25 However, “this factor lends little support to a party whose responsibility it is to move a case
26 toward disposition on the merits but whose conduct impedes progress in that direction,” which is
27 the case here. *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217,
28 1228 (9th Cir. 2006) (citation omitted). Indeed, “trial courts do not have time to waste on

1 multiple failures by aspiring litigants to follow the rules and requirements of our courts.”
2 *Pagtalunan*, 291 F.3d at 644 (Trott, J., concurring in affirmance of district court’s involuntary
3 dismissal with prejudice of habeas petition where petitioner failed to timely respond to court
4 order and noting “the weight of the docket-managing factor depends upon the size and load of the
5 docket, and those in the best position to know what that is are our beleaguered trial judges.”).

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. Both the November 15, 2024 and
9 December 6, 2024 Orders directing Plaintiff to submit an IFP application or pay the filing fee
10 expressly warned Plaintiff that his failure to timely comply would result in a recommendation of
11 dismissal of this action for his failure to prosecute this action and as a sanction under the Court’s
12 Local Rules. (*See* Doc. No. 3 at 1, Doc. No. 5 at 3, ¶ 4). Thus, Plaintiff had adequate warnings
13 that dismissal could result from his noncompliance. And the instant dismissal is a dismissal
14 *without* prejudice, which is a lesser sanction than a dismissal with prejudice, thereby addressing
15 the fifth factor.

16 After considering the factors set forth *supra* and binding case law, in the alternative, the
17 undersigned recommends dismissal, without prejudice, under Fed. R. Civ. P. 41 and Local Rule
18 110.

19 Accordingly, it is **RECOMMENDED**:

20 This action be **DISMISSED** without prejudice.

21 ///

22 ///


23 **NOTICE**

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

1 may result in waiver of his rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.
2 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: January 6, 2025


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE