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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JIM FERGUSON,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>CALIFORNIA DEPARTMENT OF CORRECTIONS; et al.,</p> <p>Defendants - Appellees.</p>
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No. 09-15299

D.C. No. 2:06-cv-01301-MCE-
KJM

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, Jr., District Judge, Presiding

Submitted October 19, 2010**

Before: O'SCANNLAIN, LEAVY, and TALLMAN, Circuit Judges.

Jim Ferguson, a former California state prisoner, appeals pro se from the district court's order dismissing his action for violating a local rule requiring that a

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

pro se litigant keep the court apprised of his current address. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion, *Eldridge v. Block*, 832 F.2d 1132, 1137-38 (9th Cir. 1987), and we reverse and remand.

Although service of orders on Ferguson attempted via United States Mail inexplicably were returned to the district court as undeliverable, the record shows that Ferguson had not changed his address. Moreover, there is no indication that the court considered sanctions less drastic than dismissal or that the court warned Ferguson that dismissal was imminent. The circumstances of this case do not justify dismissal. *See id.* at 1137 (sanctioned party arguably complied with court's order and local rule, and if court concluded otherwise it should have granted him an extension of time in which to comply); *see also Hernandez v. City of El Monte*, 138 F.3d 393, 400 (9th Cir. 1998) (reversing dismissal where less drastic sanctions were not considered).

REVERSED and REMANDED.