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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BOBBY WHITE,	Case No. 1:10-cv-01466-AWI-JLT (PC)
Plaintiff,	FINDINGS AND RECOMMENDATION TO DISMISS DEFENDANT CHINYERE AMADI WITHOUT PREJUDICE FOR FAILURE TO COMPLY WITH COURT'S ORDER
v.	
L. NGUYEN, et al.,	
Defendants.	(Doc. 39).

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. (Doc. 1). On July 19, 2012, the Court issued an order to show cause why Defendant Chinyere I. Amadi (“Amadi”) should not be dismissed from this lawsuit without prejudice. (Doc. 39). Plaintiff has failed to respond to the Court’s order. For the reasons set forth below, the Court recommends Defendant Amadi be dismissed from this action.

I. Background

On May 6, 2011, the Court screened Plaintiff’s amended complaint and found that it stated a cognizable claim against Defendant Chinyere I. Amadi, among others. (Doc. 11.) On June 29, 2011, the court directed the United States Marshal Service (“USMS”) to initiate service of process in this action. (Doc. 15.) However, on August 24, 2011, the United States Marshal returned service for Defendant Amadi, unexecuted. (Doc. 23.)

1 On September 23, 2011, the Court issued an order requiring Plaintiff to provide additional
2 information to effectuate service. (Doc. 25). Plaintiff provided the additional information,
3 including a corrected name for Defendant Amadi and an update address. (Doc. 26.) Once again,
4 the Court ordered the United States Marshall's to initiate service. Despite the USMS's attempt to
5 serve by mail and through the CDCR employee locator, the USMS certified that Amadi could not
6 be located. (Doc. 29).

7 In January 2012, the Court ordered Plaintiff to provide proper service information for
8 Amadi. (Doc. 30). Plaintiff responded with an address in Sioux Falls. (Doc. 31). The USMS
9 attempted both mail and personal service at the physical address provided by Plaintiff and found
10 the business located at that address was "closed – out of business." (Doc. 38).

11 On June 18, 2012, the remaining defendants filed their motion for summary judgment.
12 The Court's July 19, 2012 order to show cause followed.

13 **II. Discussion and Analysis**

14 "District courts have inherent power to control their dockets," and in exercising that
15 power, a court may impose sanctions including dismissal of an action. Thompson v. Housing
16 Authority of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action with
17 prejudice, based on a party's failure to prosecute an action or failure to obey a court order, or
18 failure to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)
19 (dismissal for failure to comply with local rules); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th
20 Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint);
21 Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply
22 with a court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for
23 failure to prosecute and to comply with local rules).

24 In determining whether to dismiss an action for failure to prosecute, failure to obey a court
25 order, or failure to comply with the Local Rules, the Court must consider several factors,
26 including: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to
27 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
28 disposition of cases on their merits; and (5) the availability of less drastic sanctions." Henderson,

1 779 F.2d at 1423-24; *see also* Ferdik, 963 F.2d at 1260-61; Thomson, 782 F.2d at 831.

2 In the case at hand, the public's interest in expeditiously resolving this litigation and the
3 Court's interest in managing the docket weigh in favor of dismissal. The risk of prejudice to the
4 defendants also weighs in favor of dismissal, since a presumption of injury arises from the
5 occurrence of unreasonable delay in prosecution of an action. *See* Anderson v. Air West, 542
6 F.2d 522, 524 (9th Cir. 1976). The Court will not, and cannot, hold the case in abeyance based
7 upon Plaintiff's failure respond to the Court's order, provide correct service information, or
8 prosecute this action. Further, the factors in favor of dismissal outweigh the policy favoring
9 disposition of cases on their merits.

10 In its July 19, 2012 order, the Court warned Plaintiff that if he failed to comply with the
11 order, the Court may impose sanctions, including, but not limited to "dismissal of the action."
12 (Doc.39 at 4). Thus, Plaintiff had adequate warning that dismissal would result from his
13 noncompliance with the Court's order, and this satisfies the requirement that the Court consider
14 less drastic measures than dismissal of the action. Ferdik, 963 F.2d at 1262; Henderson, 779 F.2d
15 at 1424. Moreover, no lesser sanction is feasible given the Court's inability to communicate with
16 Plaintiff.

17 Accordingly, IT IS HEREBY RECOMMENDED:

18 1. This action be DISMISSED WITHOUT PREJUDICE as to Defendant Amadi
19 only; and

20 These Findings and Recommendations are submitted to the United States District Judge
21 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the
22 Local Rules of Practice for the United States District Court, Eastern District of California. Within
23 fourteen days after being served with these Findings and Recommendations, any party may file
24 written objections with the court. Such a document should be captioned "Objections to
25 Magistrate Judge's Findings and Recommendations."

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The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: August 15, 2012

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE