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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MANUEL MARTINEZ

1:12-cv-0561-AWI-MJS (PC)

Plaintiff,

FINDINGS AND RECOMMENDATIONS  
FOR DISMISSAL OF PLAINTIFF'S  
ACTION FOR FAILURE TO  
PROSECUTE

v.

(ECF No. 10)

JAMES D. HARTLEY, et al.,

Defendants.

OBJECTIONS DUE WITHIN  
FOURTEEN DAYS

Plaintiff Manuel Martinez ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights actions pursuant to 42 U.S.C. § 1983.

Plaintiff initiated this action on February 21, 2012. (ECF No. 2.) On May 7, 2012, the Court's April 27, 2012 order granting Plaintiff's motion to proceed in forma pauperis was returned by the U.S. Postal Service as undeliverable to Plaintiff. Over 63 days passed without Plaintiff having provided the Court with a new address or other response.

On July 3, 2012, the Court issued an order to show cause giving Plaintiff an opportunity to update his address. (ECF No. 10.) Plaintiff was to respond by July 20, 2012. (Id.) July 20, 2012, has passed without Plaintiff complying with or otherwise responding to the Court's Order. The Court's July 3, 2012 Order also was returned as undeliverable by the U.S. Postal Service.

1 Pursuant to Local Rule 183(b), a party appearing in propria persona is required to  
2 keep the Court apprised of his or her current address at all times. Local Rule 183(b)  
3 provides, in pertinent part:

4 If mail directed to a plaintiff in propria persona by the Clerk is  
5 returned by the U.S. Postal Service, and if such plaintiff fails  
6 to notify the Court and opposing parties within sixty-three (63)  
days thereafter of a current address, the Court may dismiss  
the action without prejudice for failure to prosecute.

7 In the instant case, over 63 days have passed since Plaintiff's mail was returned, and he  
8 has not notified the Court of a current address.

9 Local Rule 110 provides that "failure of counsel or of a party to comply with these  
10 Rules or with any order of the Court may be grounds for imposition by the Court of any  
11 and all sanctions . . . within the inherent power of the Court." District courts have the  
12 inherent power to control their dockets and "in the exercise of that power, they may  
13 impose sanctions including, where appropriate . . . dismissal of a case." Thompson v.  
14 Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with  
15 prejudice, based on a party's failure to prosecute an action, failure to obey a court order,  
16 or failure to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th  
17 Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d  
18 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring  
19 amendment of a complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988)  
20 (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court  
21 apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987)  
22 (dismissal for failure to comply with a court order); Henderson v. Duncan, 779 F.2d 1421,  
23 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local  
24 rules).

25 In determining whether to dismiss an action for lack of prosecution, failure to obey  
26 a court order, or failure to comply with local rules, the Court must consider several factors:

1 (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to  
2 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
3 disposition of cases on their merits; and (5) the availability of less drastic alternatives.  
4 Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone, 833 F.2d at 130;  
5 Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

6 In the instant case, the Court finds that the public's interest in expeditiously  
7 resolving this litigation and the Court's interest in managing its docket weigh in favor of  
8 dismissal. The third factor, risk of prejudice to defendants, also weighs in favor of  
9 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay  
10 in prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The  
11 fourth factor -- public policy favoring disposition of cases on their merits -- is greatly  
12 outweighed by the factors in favor of dismissal discussed herein. Finally, a court's  
13 warning to a party that his failure to obey the court's order will result in dismissal satisfies  
14 the "consideration of alternatives" requirement. Ferdik v. Bonzelet, 963 F.2d at 1262;  
15 Malone, 833 at 132-33; Henderson, 779 F.2d at 1424. The Court's order expressly  
16 stated: "Failure to meet this deadline will result in dismissal of this action." (ECF No. 10.)  
17 Thus, Plaintiff had adequate warning that dismissal would result from his noncompliance  
18 with the Court's order. The inability to reach Plaintiff via the U.S. mail effectively deprives  
19 the Court of any other and less drastic alternative.

20 Based on the foregoing, the Court RECOMMENDS that this action be DISMISSED  
21 based on Plaintiff's failure to obey a court order.

22 These Findings and Recommendations are submitted to the United States District  
23 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).  
24 Within fourteen (14) days after being served with these Findings and Recommendations,  
25 any party may file written objections with the Court and serve a copy on all parties. Such  
26 a document should be captioned "Objections to Magistrate Judge's Findings and  
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1 Recommendations." The parties are advised that failure to file objections within the  
2 specified time may waive the right to appeal the District Court's order. Martinez v. Y1 st,  
3 951 F.2d 1153 (9th Cir. 1991).

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7 IT IS SO ORDERED.

8 Dated: November 29, 2012

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE