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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROBERT BERNARD ERNST,
Petitioner,
v.
FEDERAL BUREAU OF PRISONS,
et al.,
Respondents.

Case No. 2:22-cv-00354-GW-JC

MEMORANDUM OPINION AND
ORDER DISMISSING ACTION

18 **I. BACKGROUND AND SUMMARY**

19 On January 14, 2022, Petitioner Robert Bernard Ernst, who is proceeding *pro*
20 *se*, formally filed a Petition for Writ of Habeas Corpus by a Person in Federal
21 Custody pursuant to 28 U.S.C. § 2241 (“Petition”). Petitioner’s current address of
22 record (“Address of Record”) is reflected on the first page of the Petition.

23 The Court, on multiple occasions, has advised Petitioner of his obligation to
24 keep the Court apprised of his correct address and the consequences of his failure to
25 do so. See Notice of Judge Assignment and Reference to a United States
26 Magistrate Judge (Docket No. 2) (advising Petitioner that he is required to notify
27 the Court within five (5) days of any address change, and that if mail directed by the
28 Clerk to his address of record is returned undelivered by the Post Office, and if the

1 Court is not timely notified thereafter of his current address, the Court may dismiss
2 the matter for want of prosecution) (citing Local Rule 83-2.5); Order Requiring
3 Answer to Petition for Writ of Habeas Corpus (Docket No. 3) (advising Petitioner
4 to immediately notify the Court and counsel for Respondent of any change of
5 Petitioner’s address and cautioning Petitioner that the failure to keep the Court
6 informed of where Petitioner may be contacted, may subject the Petition to
7 dismissal for failure to prosecute) (citing Local Rule 41-6); Order Regarding
8 Requirements for Preparation and Submission of Documents (Docket No. 4)
9 (advising Petitioner that “[a]s long as this action is pending, [P]etitioner must
10 immediately notify the [C]ourt and [R]espondent’s attorney of any change of
11 address, and of the new address and its effective date” and cautioning Petitioner that
12 if he fails to keep the Court informed of a correct mailing address, this action may
13 be dismissed under Local Rule 41-6 (quoting Local Rule 41-6).

14 On February 18, 2022, Respondent filed a Motion to Dismiss Petition
15 (“Motion to Dismiss”) which reflects, among other things, that Petitioner was
16 released from the custody of the Bureau of Prisons on February 7, 2022. On
17 February 21, 2022, the Court issued an Order (“February Order”) directing
18 Petitioner to file an opposition/response to the Motion to Dismiss by not later than
19 March 11, 2022 (or alternatively, in the event Petitioner no longer wished to
20 proceed with the Petition in light of his release, a signed Notice of Dismissal).
21 (Docket No. 8). The February Order was entered on February 22, 2022 and
22 contemporaneously sent to Petitioner at his Address of Record.

23 On March 8, 2022, the copy of the February Order that was sent to Petitioner
24 at his Address of Record was returned by the Postal Service as undeliverable. To
25 date, Petitioner has failed to notify the Court of his new/updated address.

26 As discussed below, this action is dismissed due to Petitioner’s failure to
27 keep the Court apprised of his correct address, which amounts to a failure to
28 prosecute.

1 **II. DISCUSSION**

2 Pursuant to Local Rule 41-6, a party proceeding *pro se* is required to keep
3 the Court apprised of his current address at all times. Local Rule 41-6 provides in
4 pertinent part:

5 A party proceeding *pro se* must keep the Court and all other parties
6 informed of the party’s current address as well as any telephone
7 number and e-mail address. If a Court order or other mail served on a
8 *pro se* plaintiff at his address of record is returned by the Postal
9 Service as undeliverable and the *pro se* party has not filed a notice of
10 change of address within 14 days of the service date of the order or
11 other Court document, the Court may dismiss the action with or
12 without prejudice for failure to prosecute.

13 In the instant case, more than 14 days have passed since the service date of
14 the February Order. As noted above, to date, Petitioner has not notified the Court
15 of his new address.

16 The Court has the inherent power to achieve the orderly and expeditious
17 disposition of cases by dismissing actions for failure to prosecute. See Fed. R. Civ.
18 P. 41(b); Link v. Wabash R.R., 370 U.S. 626, 629-30 (1962). In determining
19 whether to dismiss an action for failure to prosecute, a district court must consider
20 several factors: (1) the public’s interest in expeditious resolution of litigation;
21 (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendant;
22 (4) the public policy favoring disposition of cases on their merits; and (5) the
23 availability of less drastic alternatives. See In re Eisen, 31 F.3d 1447, 1451 (9th
24 Cir. 1994). Dismissal is appropriate under the foregoing analysis “where at least
25 four factors support dismissal . . . or where at least three factors ‘strongly’ support
26 dismissal.” Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998)
27 (citations omitted).

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1 The Court finds that the first two factors – the public’s interest in
2 expeditiously resolving this litigation and the Court’s interest in managing the
3 docket, weigh in favor of dismissal. The Court cannot hold this case in abeyance
4 indefinitely based on Petitioner’s failure to notify the Court of his correct address.
5 See Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal of
6 action for lack of prosecution pursuant to local rule which permitted such dismissal
7 when pro se plaintiff failed to keep court apprised of correct address; “It would be
8 absurd to require the district court to hold a case in abeyance indefinitely just
9 because it is unable, through plaintiff’s own fault, to contact the plaintiff to
10 determine if his reasons for not prosecuting his lawsuit are reasonable or not.”).
11 The third factor, risk of prejudice to the Respondents, also weighs in favor of
12 dismissal since a presumption of injury arises from the occurrence of unreasonable
13 delay in prosecuting an action. Anderson v. Air West, Inc., 542 F.2d 522, 524 (9th
14 Cir. 1976). The fourth factor, the public policy favoring disposition of cases on
15 their merits, is greatly outweighed by the factors in favor of dismissal discussed
16 herein. Finally, given the Court’s inability to communicate with Petitioner based
17 on his failure to keep the Court apprised of his current address, no lesser sanction
18 is feasible. See Musallam v. United States Immigration Service, 2006 WL
19 1071970 (E.D. Cal. Apr. 24, 2006).

20 **III. ORDER**

21 IT IS THEREFORE ORDERED that this action is dismissed for lack of
22 prosecution based upon Petitioner’s failure to keep the Court apprised of his
23 current address.

24 IT IS SO ORDERED.

25 DATED: March 14, 2022

26 

27 HONORABLE GEORGE H. WU
28 UNITED STATES DISTRICT JUDGE