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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ALESHIA BERTHA RIVERA,
Plaintiff,
v.
OFFICERS AT WEST VALLEY
DETENTION CENTER
Defendants.

Case No. EDCV 16-151 ODW(JC)
MEMORANDUM OPINION AND
ORDER DISMISSING ACTION

I. BACKGROUND AND SUMMARY

On January 26, 2016, Aleshia Bertha Rivera (“plaintiff”), who was then a prisoner at the West Valley Detention Center in San Bernardino County, is proceeding *pro se*, and has been granted leave to proceed *in forma pauperis*, filed a Civil Rights Complaint (“Complaint”) which appears to be brought pursuant to 42 U.S.C. § 1983 (“Section 1983”) and names as defendants only “Officers at West Valley Detention Center.” Plaintiff sues all defendants in their official capacities only, and seeks only monetary relief. (Complaint at 3, 6).

On January 27, 2016, the Clerk sent a “Notice of Assignment” (“Notice”) to plaintiff at the address she provided on the Complaint (“Address of Record”). The Notice expressly advised plaintiff that she was required to notify the Court within

1 five (5) days of any address change, and that if mail directed by the Clerk to her
2 Address of Record was returned undelivered by the Post Office, and if the Court
3 was not timely notified thereafter of her current address, the Court may dismiss the
4 matter for want of prosecution. The Notice was not returned as undeliverable by
5 the Post Office.

6 On January 28, 2016, the assigned Magistrate Judge issued an Initial Order
7 Re: Civil Rights Cases (“Initial Order”) which also expressly advised plaintiff that
8 she must immediately notify the Court if her address changed and provide the Court
9 with her new address and its effective date, and that the failure to do so may result
10 in the dismissal of the case for want of prosecution.

11 Further, as plaintiff is proceeding *in forma pauperis*, the assigned Magistrate
12 Judge screened the Complaint to determine if the action is frivolous or malicious,
13 fails to state a claim on which relief may be granted, or seeks monetary relief
14 against a defendant who is immune from such relief. See 28 U.S.C.

15 § 1915(e)(2)(B). On February 4, 2016, the Magistrate Judge issued an order
16 (“February Order”) advising plaintiff that the Complaint was deficient for reasons
17 described in the February Order, dismissing the Complaint, and affording plaintiff
18 leave to file a First Amended Complaint by February 24, 2016, if she wished to
19 proceed with this action.¹ The February Order expressly cautioned plaintiff that the
20 failure timely to file a First Amended Complaint might result in the dismissal of this
21 action with or without prejudice on the grounds set forth in the February Order
22 and/or for failure diligently to prosecute. Court records reflect that the February

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24 Order was sent to plaintiff at the Address of Record on February 5, 2016 and was

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26 ¹Specifically, the Magistrate Judge advised plaintiff, albeit in greater detail and with
27 citation to authorities, that the Complaint, among other deficiencies: (1) violated Rule 10(a) of
28 the Federal Rules of Civil Procedure because it did not name “all the partes” as required, and
indeed named no defendants; (2) failed to state an official capacity claim against any defendant;
and (3) failed to state an individual capacity claim against any defendant.

1 not returned as undeliverable.

2 As the foregoing February 24, 2016 deadline expired without any action by
3 plaintiff, the Magistrate Judge, on March 9, 2016, issued an Order to Show Cause
4 Re Dismissal (“OSC”) directing plaintiff, by March 23, 2016, to show cause in
5 writing why this action should not be dismissed based upon the deficiencies in the
6 Complaint which had been identified in the February Order, and/or based upon
7 plaintiff’s failure to prosecute this action. On March 23, 2016, the copy of the OSC
8 which the Clerk sent to plaintiff at her Address of Record was returned as
9 undeliverable.

10 As discussed below, this action is dismissed due to plaintiff’s unreasonable
11 failure to prosecute and plaintiff’s failure to comply with the Court’s order.

12 **II. PERTINENT LAW**

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

16 A party proceeding *pro se* shall keep the Court and opposing parties
17 apprised of such party’s current address and telephone number, if any,
18 and e-mail address, if any. If mail directed by the Clerk to a *pro se*
19 plaintiff’s address of record is returned undelivered by the Postal
20 Service, and if, within fifteen (15) days of the service date, such
21 plaintiff fails to notify, in writing, the Court and opposing parties of
22 said plaintiff’s current address, the Court may dismiss the action with
23 or without prejudice for want of prosecution.

24 In the instant case, more than fifteen (15) days have passed since the OSC
25 was served upon plaintiff and returned undelivered by the Postal Service. As noted
26 above, to date, plaintiff has not notified the Court of her new address.

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28 It is well-established that a district court may *sua sponte* dismiss an action

1 where the plaintiff has failed to comply with a court order and/or unreasonably
2 failed to prosecute. See Link v. Wabash Railroad Co., 370 U.S. 626, 629-33
3 (1962); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir.) (as amended), cert.
4 denied, 506 U.S. 915 (1992); see also McKeever v. Block, 932 F.2d 795, 797 (9th
5 Cir. 1991) (district court may *sua sponte* dismiss action “only for an unreasonable
6 failure to prosecute”) (citations omitted); see also Edwards v. Marin Park, Inc., 356
7 F.3d 1058, 1065 (9th Cir. 2004) (*sua sponte* dismissal pursuant to Fed. R. Civ. P.
8 41(b) proper sanction in cases where a plaintiff is notified of deficiencies in
9 complaint and is given “the opportunity to amend [the complaint] or be dismissed”
10 but the plaintiff “[does] *nothing*”) (citations omitted; emphasis in original).

11 In determining whether to dismiss an action for failure to prosecute or
12 failure to comply with court orders, a district court must consider several factors,
13 namely (1) the public’s interest in expeditious resolution of litigation; (2) the
14 court’s need to manage its docket; (3) the risk of prejudice to defendants; (4) the
15 public policy favoring disposition of cases on their merits; and (5) the availability
16 of less drastic alternatives. See In re Eisen, 31 F.3d 1447, 1451 (9th Cir. 1994)
17 (failure to prosecute); Ferdik, 963 F.2d at 1260-61 (failure to comply with court
18 orders). Dismissal is appropriate under the foregoing analysis “where at least four
19 factors support dismissal . . . or where at least three factors ‘strongly’ support
20 dismissal.” Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998)
21 (citations omitted). Where a plaintiff is proceeding *pro se*, however, the court must
22 first notify the plaintiff of the deficiencies in the complaint so that the plaintiff has
23 an opportunity “to amend effectively.” Ferdik, 963 F.2d at 1261 (citation omitted).
24 In addition, where a Magistrate Judge originally dismissed the complaint with
25 leave to amend, the District Judge must review that decision before dismissing the
26 entire action. See McKeever, 932 F.2d at 797 (“While the magistrate can dismiss
27 complaints with leave to amend, the district court necessarily must review that
28

1 decision before dismissing the entire action.”). A district judge may not dismiss an
2 action for failure to comply with a court order (*e.g.*, the Magistrate Judge’s order to
3 file an amended complaint) or for unreasonable failure to prosecute if the initial
4 decision to dismiss a complaint was erroneous. Yourish v. California Amplifier,
5 191 F.3d 983, 992 (9th Cir. 1999) (citing *id.*).

6 **III. DISCUSSION AND ORDER**

7 First, the Court has reviewed the February Order, agrees with the February
8 Order, and finds that the Magistrate Judge properly dismissed the Complaint with
9 leave to amend for the reasons discussed therein.

10 Second, plaintiff has been notified that the Complaint failed to state any
11 viable claim for relief and was subject to dismissal, at least, based upon the
12 deficiencies detailed in the February Order. Plaintiff has been granted an
13 opportunity to either file a First Amended Complaint or to provide good cause why
14 dismissal is not appropriate. Plaintiff has done neither.

15 Third, plaintiff has also at least twice been notified of her obligation to keep
16 the Court informed as to her current address and the consequences of her failure to
17 do so, and she has not notified the Court of her current address.

18 Finally, upon consideration of the five factors noted above, the Court finds
19 plaintiff’s unreasonable failure to prosecute her case, to keep the Court apprised of
20 her current address and to otherwise comply with the February Order warrants
21 dismissal. The first two factors – the public’s interest in expeditiously resolving
22 this litigation and the Court’s interest in managing the docket, weigh in favor of
23 dismissal. In short, plaintiff’s failure to keep the Court apprised of her current
24 address or to respond to the Court’s directives has caused the action to come to a
25 virtual standstill. The third factor, risk of prejudice to defendants, also weighs
26 strongly in favor of dismissal. Where, like here, there has been such an
27 unreasonable delay, a presumption of injury arises. See Anderson v. Air West,
28 Inc., 542 F.2d 522, 524 (9th Cir. 1976) (citation omitted). When evaluating

1 prejudice courts also consider the reasons proffered for delay. See Malone v.
2 United States Postal Service, 833 F.2d 128, 131 (9th Cir. 1987) (citation omitted),
3 cert denied, 488 U.S. 819 (1988). Here, plaintiff has proffered no reason. The
4 fourth factor, the public policy favoring disposition of cases on their merits, is
5 greatly outweighed by the factors in favor of dismissal discussed herein. As for the
6 fifth factor, since plaintiff has already been cautioned of the consequences of her
7 failure to prosecute and her failure to comply with the Court's orders, and has been
8 afforded the opportunity to avoid such consequences but has not responded, no
9 sanction lesser than dismissal with prejudice is feasible. See, e.g., Yourish, 191
10 F.3d at 989 (dismissal of action *with prejudice* not excessive sanction for plaintiffs'
11 failure timely to comply with court's order to submit an amended complaint).

12 IT IS THEREFORE ORDERED that this action is dismissed based upon
13 plaintiff's unreasonable failure to prosecute, to keep the Court apprised of her
14 address, and otherwise to comply with the Court's February Order.

15 IT IS SO ORDERED.

16
17 DATED: April 12, 2016



HONORABLE OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE