

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VINCENT CILIENTO,)	CASE NO. ED CV 17-953-DSF (PJW)
)	
Plaintiff,)	ORDER DISMISSING ACTION FOR
)	FAILURE TO PROSECUTE
v.)	
)	
CALIFORNIA DEPARTMENT)	
OF CORRECTIONS, et al.,)	
)	
Defendants.)	
_____)	

In February 2017, Plaintiff Vincent Ciliento, proceeding *pro se*, filed this civil rights action against the California Department of Corrections and two doctors working there. Plaintiff alleged that the doctors exaggerated the truth in their reports and "twisted" his vandalism conviction--a non-violent crime--in order to have him falsely imprisoned as a Mentally Disordered Offender at Atascadero State Hospital ("ASH"). Plaintiff claimed that he should have been released from prison in November 2016 and sought injunctive and monetary relief. Plaintiff attached to the Complaint a decision from the Board of Parole, which noted that, at an administrative hearing on February 1, 2017, the presiding administrative law judge determined that the special condition for treatment by the Department of State Hospital should be removed because Plaintiff's crimes were non-

1 violent. As a result, the Court contacted ASH to determine if
2 Plaintiff was still at ASH. ASH personnel informed the Court that
3 Plaintiff had been discharged on February 17, 2017, and had not left a
4 forwarding address.

5 On June 27, 2017, the Court issued an Order to Show Cause why the
6 case should not be dismissed. Plaintiff was ordered to respond by
7 July 19, 2017, and was warned that, if he did not timely respond, his
8 case would be dismissed. That order was returned to the Court by the
9 Postal Service because Plaintiff was no longer at ASH. Two other
10 pleadings sent to Plaintiff at ASH were also returned because
11 Plaintiff was no longer living there. (Doc. Nos. 7, 9.)

12 Rule 41(b) of the Federal Rules of Civil Procedure authorizes a
13 district court to *sua sponte* dismiss an action for failure to comply
14 with a court order. *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629-30
15 (1962) ("The power to invoke this sanction is necessary in order to
16 prevent undue delays in the disposition of pending cases and to avoid
17 congestion in the calendars of the District Courts."). In determining
18 whether dismissal is warranted, the Court considers five factors:
19 (1) the public's interest in expeditious resolution of litigation,
20 (2) the Court's need to manage its docket, (3) the risk of prejudice
21 to Defendants, (4) the public policy favoring the disposition of cases
22 on their merits, and (5) the availability of less drastic sanctions.
23 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992); *Omstead v.*
24 *Dell*, 594 F.3d 1081, 1084 (9th Cir. 2010).

25 The Court finds that the delay here necessarily implicates both
26 the interest in expeditious resolution of litigation and the Court's
27 need to efficiently manage its docket--the first and second factors--

1 and weighs in favor of dismissal. See *Yourish v. Cal. Amplifier*, 191
2 F.3d 983, 990 (9th Cir. 1999) (“[T]he public’s interest in expeditious
3 resolution of litigation always favors dismissal.”); *Pagtalunan v.*
4 *Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (finding factors of public
5 interest in expeditious resolution of case and court’s need to manage
6 its docket weigh in favor of dismissal where litigant failed to pursue
7 the case for almost four months). Plaintiff’s failure to keep the
8 Court apprised of his address--a violation of Local Rule 41-6--has
9 caused this action to come to a halt, impermissibly allowing Plaintiff
10 to control the pace of the docket rather than the Court. See *Yourish*,
11 191 F.3d at 990; *Pagtalunan*, 291 F.3d at 642 (“It is incumbent upon
12 the Court to manage its docket without being subject to routine
13 noncompliance of litigants”).

14 The third factor--risk of prejudice to Defendants--also weighs in
15 favor of dismissal. As time goes by, the witnesses’ memories begin to
16 fade and the evidence becomes stale, making it increasingly difficult
17 to defend against these claims. See *In re Phenylpropa-nolamine (PPA)*
18 *Prod. Liab. Litig.*, 460 F.3d 1217, 1227 (9th Cir. 2006) (“The law . .
19 . presumes prejudice from unreasonable delay.”).

20 The fourth factor--the general policy favoring resolution of
21 cases on the merits--weighs in Plaintiff’s favor. See *Pagtalunan*, 291
22 F.3d at 643 (“Public policy favors disposition of cases on the
23 merits.”). But that factor alone is not enough to overcome the other
24 factors.

25 Finally, the fifth factor--availability of less drastic
26 alternatives--also weighs in favor of dismissal. The Court is unable
27 to impose a lesser sanction, e.g., monetary sanctions, because
28

1 Plaintiff is proceeding IFP and, therefore, does not have any money to
2 pay sanctions and because he cannot be found.

3 Considering all five factors, the Court concludes that dismissal
4 for failure to prosecute is warranted. See *Ferdik*, 963 F.2d at 1263
5 (concluding dismissal appropriate where supported by three factors);
6 *Pagtalunan*, 293 F.3d at 643 (same).

7 IT IS SO ORDERED.

8 DATED: 8/22/17

9
10 

11

DALE S. FISCHER
12 UNITED STATES DISTRICT JUDGE
13
14
15
16
17
18
19
20
21
22

23 Presented by:

24 

25

PATRICK J. WALSH
26 UNITED STATES MAGISTRATE JUDGE
27
28