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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

WILLIAM ROBERTS,
Plaintiff,

v.

GAVIN NEWSOM et al.,
Defendants.

Case No. 5:20-cv-01810-CJC (MAA)

ORDER OF DISMISSAL

I. SUMMARY OF PROCEEDINGS

On June 15, 2020, Plaintiffs Narvis Nonnette, William Roberts, and Richard Cooper filed a *pro se* putative class action lawsuit in this Court as case no. 5:20-cv-01218-CJC-MAA, alleging violations of their civil rights pursuant to 42 U.S.C. § 1983 (“*Nonnette*”). (*Nonnette* Compl., ECF No. 1.) On June 19, 2020, the Court advised the *Nonnette* plaintiffs that a putative class action lawsuit cannot be brought *pro se*, that multiple inmate *pro se* plaintiffs cannot bring a single lawsuit in this Court, and that each plaintiff separately is required to pay the full filing fee or submit an application to proceed *in forma pauperis*. (ECF No. 4.) The Court ordered each plaintiff to advise whether he wanted to proceed with the *Nonnette* lawsuit, dismiss his claims, or sever his claims into a separate prisoner civil rights

1 action. (*Id.*) On August 28, 2020, Plaintiff William Roberts (“Plaintiff”) requested
2 that his claims be severed from the *Nonnette* case. (*Nonnette* ECF No. 13.) On
3 August 31, 2020, the Court granted Plaintiff’s request to sever his claims and
4 directed the clerk to docket the *Nonnette* Complaint in a new lawsuit with a new
5 case number. (*Nonnette* ECF No. 14.)

6 On September 3, 2020, the *Nonnette* Complaint was filed in this case solely
7 with respect to Plaintiff’s claims. (Compl., ECF No. 1.) After multiple applications
8 to proceed *in forma pauperis*, on February 5, 2021 the Court granted Plaintiff’s
9 amended Request to Proceed Without Prepayment of Filing Fees with Declaration
10 of Support. (ECF No. 19.)

11 On February 11, 2021, the Court screened the Complaint pursuant to 28
12 U.S.C. §§ 1915A(b), 1915(e)(2)(B) and dismissed the Complaint with leave to
13 amend (“Order”). (Order, ECF No. 21.) The Order provided that “[n]o later than
14 **March 15, 2021**, Plaintiff must either: (1) file a First Amended Complaint (“FAC”)
15 that addresses the deficiencies set forth above; or (2) advise the Court that Plaintiff
16 does not intend to pursue this lawsuit further and will not file a FAC.” (*Id.* at 4–5.)
17 The Order “**advised that failure to comply with this order w[ould] result in a**
18 **recommendation that the lawsuit be dismissed without prejudice for failure to**
19 **prosecute and/or comply with court orders. See Fed. R. Civ. P. 41(b); C.D. Cal.**
20 **L.R. 41-1.”** (*Id.* at 5.)

21 On April 6, 2021, in the absence of a filed FAC, the Court issued an Order to
22 Show Cause (“OSC”), ordering Plaintiff to show cause by May 6, 2021 why the
23 Court should not recommend that the case be dismissed for want of prosecution.
24 (OSC, ECF No. 22.) The OSC stated that if Plaintiff filed a FAC or dismissed the
25 case before that date, the OSC would be discharged. (*Id.*) The OSC “**advised that**
26 **failure to comply with this order w[ould] result in a recommendation that the**
27 **lawsuit be dismissed without prejudice for failure to prosecute and/or comply**
28 **with court orders. See Fed. R. Civ. P. 41(b); C.D. Cal. L.R. 41-1.”** (*Id.*)

1 On April 19, 2021, the OSC was returned to the Court as undeliverable by the
2 U.S. postal service. (ECF No. 23.) The returned envelope was stamped with “NOT
3 IN CUSTODY, RETURN TO SENDER.” (*Id.*)

4 To date, Plaintiff has failed to file a FAC, failed to respond to either the Order
5 or OSC, and has not updated his address with the Court. Indeed, Plaintiff has not
6 communicated with the Court since February 1, 2021.

7 8 **II. LEGAL STANDARD**

9 Central District of California Local Rule 41-6 states:

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

18 C.D. Cal. L.R. 41-6.

19 District courts may dismiss cases *sua sponte* for failure to prosecute or for
20 failure to comply with a court order under Federal Rule of Civil Procedure 41(b).
21 *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005);
22 *see also Link v. Wabash R.R. Co.*, 370 U.S. 626, 629–30 (1962) (holding that the
23 court has “inherent power” to dismiss cases *sua sponte* for lack of prosecution).
24 Unless the Court states otherwise, a dismissal under Rule 41(b) operates as an
25 adjudication on the merits. Fed. R. Civ. P. 41(b). “Dismissal is a harsh penalty and
26 is to be imposed only in extreme circumstances.” *In re: Phenylpropanolamine*
27 *(PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone v.*
28 *USPS*, 833 F.2d 128, 130 (9th Cir. 1987)).

“A Rule 41(b) dismissal ‘must be supported by a showing of unreasonable
delay.’” *Omstead v. Dell*, 594 F.3d 1081, 1084 (9th Cir. 2010) (quoting *Henderson*

1 v. *Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)). In addition, the court must weigh
2 the following factors in determining whether a Rule 41(b) dismissal is warranted:
3 “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need
4 to manage its docket; (3) the risk of prejudice to the defendants/respondents; (4) the
5 availability of less drastic alternatives; and (5) the public policy favoring disposition
6 of cases on their merits.” *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002).
7 The Ninth Circuit will “affirm a dismissal where at least four factors support
8 dismissal, or where at least three factors strongly support dismissal.” *Dreith v. Nu*
9 *Image, Inc.*, 648 F.3d 779, 788 (9th Cir. 2011) (quoting *Yourish v. Cal. Amplifier*,
10 191 F.3d 983, 990 (9th Cir. 1999)). Finally, “in order to warrant a sanction of
11 dismissal, the party’s violations of the court’s orders must be due to wilfulness or
12 bad faith.” *Id.*

13 14 **III. ANALYSIS**

15 **A. The Public’s Interest in Expeditious Resolution and the Court’s** 16 **Need to Manage Its Docket**

17 The first and second factors (the public’s interest in expeditious resolution of
18 litigation and the Court’s need to manage its docket)¹ weigh in favor of dismissal.
19 “Orderly and expeditious resolution of disputes is of great importance to the rule of
20 law.” *In re: Phenylpropanolamine*, 460 F.3d at 1227. “The public’s interest in
21 expeditious resolution of litigation always favors dismissal.” *Pagtalunan*, 291 F.3d
22 at 642 (quoting *Yourish*, 191 F.3d at 990). In addition, district courts “have an
23 inherent power to control their dockets,” *In re: Phenylpropanolamine*, 460 F.3d at
24 1227 (quoting *Thompson v. Hous. Auth. of Los Angeles*, 782 F.2d 829, 831 (9th Cir.
25 1986)), and “are best suited to determine when delay in a particular case interferes
26

27 _____
28 ¹ The first two factors are usually reviewed together “to determine if there is an
unreasonable delay.” *In re Eisen*, 31 F.3d 1447, 1452 (9th Cir. 1994).

1 with docket management and the public interest.” *Yourish*, 191 F.3d at 990
2 (quoting *Ash v. Cvetkov*, 739 F.2d 493, 496 (9th Cir. 1984)).

3 Plaintiff has failed to file a FAC or otherwise respond to the Order or OSC,
4 has failed to update his mailing address, and has not otherwise participated in this
5 lawsuit since February 1, 2021. The Court concludes that Plaintiff’s inaction and
6 lack of communication with the Court constitute willful unreasonable delay. *See*,
7 *e.g.*, *Thomas v. Maricopa Cnty. Jail*, 265 F. App’x. 606, 607 (9th Cir. 2008)
8 (holding that district court did not abuse its discretion by dismissing *pro se* prisoner
9 lawsuit for failure to respond to a court order for almost three months). Plaintiff’s
10 noncompliance also interferes with the public’s interest in the expeditious
11 resolution of this litigation and hinders the Court’s ability to manage its docket. *See*
12 *In re: Phenylpropanolamine*, 460 F.3d at 1227 (“[The Ninth Circuit] defer[s] to the
13 district court’s judgment about when a delay becomes unreasonable ‘because it is in
14 the best position to determine what period of delay can be endured before its docket
15 becomes unmanageable.”) (quoting *In re Eisen*, 31 F.3d at 1451)). The first and
16 second factors favor dismissal.

17 18 **B. Risk of Prejudice to Defendants**

19 The third factor (risk of prejudice to the defendants) also weighs in favor of
20 dismissal. “A defendant suffers prejudice if the plaintiff’s actions impair the
21 defendant’s ability to go to trial or threaten to interfere with the rightful decision of
22 the case.” *In re: Phenylpropanolamine*, 460 F.3d at 1227 (quoting *Adriana Int’l*
23 *Corp. v. Thoenen*, 913 F.2d 1406, 1412 (9th Cir. 1990)). “The law also presumes
24 prejudice from unreasonable delay.” *Id.* The risk of prejudice to a defendant is
25 related to a plaintiff’s reason for failure to prosecute an action. *Pagtalunan*, 291
26 F.3d at 642. “Whether prejudice is sufficient to support an order of dismissal is in
27 part judged with reference to the strength of the plaintiff’s excuse for the default.”
28 *Malone*, 833 F.2d at 131.

1 Plaintiff continuously has refused to file a FAC without explanation. As
2 Plaintiff has not updated his address with the Court after being released from
3 custody, the Court cannot ascertain Plaintiff's reason for failing to prosecute this
4 lawsuit or comply with Court orders. *See Carey v. King*, 856 F.2d 1439, 1441 (9th
5 Cir. 1988) ("It would be absurd to require the district court to hold a case in
6 abeyance indefinitely just because it is unable, through the plaintiff's own fault, to
7 contact the plaintiff to determine if his reasons for not prosecuting his lawsuit are
8 reasonable or not.") As "a presumption of prejudice arises from the plaintiff's
9 unexplained failure to prosecute," the third factor favors dismissal. *See Hernandez*
10 *v. City of El Monte*, 138 F.3d 393, 400 (9th Cir. 1998).

11 12 **C. Availability of Less Drastic Alternatives**

13 The fourth factor (the availability of less drastic alternatives) also supports
14 dismissal. "The district court need not exhaust every sanction short of dismissal
15 before finally dismissing a case, but must explore possible and meaningful
16 alternatives." *Henderson*, 779 F.2d at 1424.

17 The Court considered and implemented less drastic alternatives prior to
18 dismissal. The Court twice warned Plaintiff that failure to file a FAC would result
19 in a recommendation that the action be dismissed for failure to prosecute and/or
20 failure to comply with Court orders pursuant to Federal Rule of Civil Procedure
21 41(b). (Order 5; OSC.) *See In re: Phenylpropanolamine*, 460 F.3d at 1229
22 ("Warning that failure to obey a court order will result in dismissal can itself meet
23 the 'consideration of alternatives' requirement."). The Court also extended
24 Plaintiff's deadline to a FAC from March 15, 2021 to May 6, 2021. (OSC.) *See*
25 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992) (holding that the district
26 court's allowance of an additional thirty days for plaintiff to file an amended
27 complaint was an attempt at a less drastic sanction). As Plaintiff has not provided
28 his updated address to the Court, no alternatives to dismissal currently are available.

1 See *Carey*, 856 F.2d at 1441 (concluding that there was no less drastic sanction
2 available than dismissal where mail addressed to plaintiff was returned by the post
3 office as undeliverable and plaintiff did not provide updated address to court). The
4 fourth factor weighs in favor of dismissal.

5
6 **D. Public Policy Favoring Disposition on the Merits**

7 As to the fifth factor, “[p]ublic policy favors disposition of cases on the
8 merits.” *Pagtalunan*, 291 F.3d at 643. However, “a case that is stalled or
9 unreasonably delayed by a party’s failure to comply with deadlines . . . cannot move
10 toward resolution on the merits.” *In re: Phenylpropanolamine*, 460 F.3d at 1228.
11 Thus, “this factor lends little support to a party whose responsibility it is to move a
12 case towards disposition on the merits but whose conduct impedes progress in that
13 direction.” *Id.* (internal quotation marks omitted). The case has been stalled by
14 Plaintiff’s failure to file a FAC, otherwise respond to the Order or OSC, or update
15 his address with the Court. Still, the public policy favoring the resolution of
16 disputes on the merits is strong and, under the circumstances, outweighs Plaintiff’s
17 noncompliance and inaction.

18
19 **E. Dismissal Without Prejudice**

20 In summary, Plaintiff’s failure to file a FAC or otherwise respond to the
21 Order or OSC, failure to update his mailing address, and failure to otherwise
22 participate in this lawsuit since February 1, 2021 constitute willful unreasonable
23 delay. Four of the Rule 41(b) dismissal factors weigh in favor of dismissal,
24 whereas only one factor weighs against dismissal. “While the public policy
25 favoring disposition of cases on their merits weighs against [dismissal], that single
26 factor is not enough to preclude imposition of this sanction when the other four
27 factors weigh in its favor.” *Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007,
28 1022 (9th Cir. 2002). The Court concludes that dismissal of this action for failure

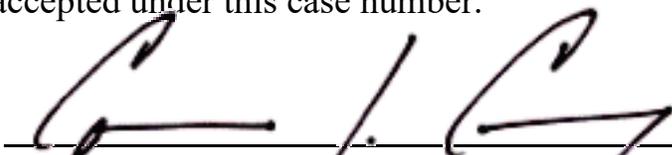
1 to prosecute and to comply with Court orders is warranted, but, consistent with Rule
2 41(b) and this Court's exercise of its discretion, the dismissal is without prejudice.

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IV. CONCLUSION

IT THEREFORE IS ORDERED that this lawsuit is DISMISSED without prejudice. No further filings shall be accepted under this case number.

DATED: June 4, 2021



HON. CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE

Presented by:



MARIA A. AUDERO
UNITED STATES MAGISTRATE JUDGE