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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

BRYAN BOSTIC,  
Plaintiff,  
v.  
LARRY D. SMITH FACILITY,  
Defendants.

Case No. 5:23-cv-00333-JWH-JC  
MEMORANDUM OPINION AND  
ORDER DISMISSING ACTION

1 **I. BACKGROUND AND SUMMARY**

2 On February 15, 2023, Plaintiff Bryan Bostic, who was then in custody,  
3 signed a Civil Rights Complaint that was formally filed on February 23, 2023.  
4 (Docket No. 1). The Complaint reflects that Plaintiff was then housed at the Larry  
5 D. Smith Correctional Facility, 1627 S. Hargrave Street, Banning, California 92220  
6 (“Address of Record”).

7 On February 28, 2023, the Clerk issued and served on Plaintiff at his Address  
8 of Record, a Discrepancy Notice regarding Plaintiff’s failure to pay the filing fee,  
9 notifying him that if he could not pay the filing fee he must complete and return an  
10 attached Request to Proceed without Prepayment of Filing Fees with Declaration in  
11 Support (Form CV-60P), and advising him that if he did not respond within thirty  
12 days, his case may be dismissed. (Docket No. 2). On March 1, 2023, the Clerk’s  
13 Office issued and served on Plaintiff at his Address of Record, a Notice of Judge  
14 Assignment and Reference to a United States Magistrate Judge (“Notice of  
15 Assignment”). (Docket No. 3).

16 On March 13, 2023, copies of the Discrepancy Notice and the Notice of  
17 Assignment that were sent to Plaintiff at his Address of Record were returned by the  
18 Postal Service as undeliverable, with “NIC” notations (presumably standing for  
19 “not in custody”) and notations that they could not be forwarded. (Docket Nos. 4,  
20 5).<sup>1</sup> To date, Plaintiff has failed to notify the Court of his new/updated address.

21 As discussed below, this action is dismissed due to Plaintiff’s failure to keep  
22 the Court apprised of his correct address, which amounts to a failure to prosecute.  
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26 <sup>1</sup>Both items of returned mail reflect they were received by the Clerk on March 13, 2023,  
27 with the former being filed on March 13, 2023, and the latter being filed on March 21, 2023.  
28 (Docket Nos. 4, 5). On March 22, 2023, another copy of the Discrepancy Notice that was sent to  
Plaintiff and his “jailhouse lawyer” at the Address of Record was also returned undelivered with  
an “NIC” notation and a notation that it could not be forwarded. (Docket No. 6).

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

13 In the instant case, more than 14 days have passed since the service date of  
14 the Discrepancy Notice and Notice of Assignment. As noted above, to date,  
15 Plaintiff has not notified the Court 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).

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 Plaintiff’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 defendants, 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 Plaintiff based on  
17 his failure to keep the Court apprised of his current address, no lesser sanction is  
18 feasible. See Musallam v. United States Immigration Service, 2006 WL 1071970  
19 (E.D. Cal. Apr. 24, 2006).

20 **III. ORDER**

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

24 **IT IS SO ORDERED.**

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26 DATED: April 12, 2023

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HONORABLE JOHN W. HOLCOMB  
UNITED STATES DISTRICT JUDGE