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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LEONARD HADLEY,

1:10-cv-0521-AWI-MJS (PC)

Plaintiff,

FINDINGS AND RECOMMENDATION
FOR DISMISSAL OF PLAINTIFF'S
COMPLAINT FOR FAILURE TO OBEY
A COURT ORDER AND FAILURE TO
UPDATE ADDRESS

v.

ROBERT BARNES, et al.,

(ECF No. 11)

Defendants.

OBJECTIONS DUE WITHIN
FOURTEEN DAYS

_____ /

Plaintiff Leonard Hadley, Jr. ("Plaintiff") is a former state prisoner proceeding pro se and in forma pauperis in this civil rights actions pursuant to 42 U.S.C. § 1983.

On January 31, 2012, the Court issued an Order, ordering Plaintiff to show cause as to why Plaintiff's prior actions referred to in the Order did not count as "strikes" under 28 U.S.C. § 1915(g) and why this action should not be dismissed without prejudice to allow Plaintiff to refile with the submission of the \$350.00 filing fee. (ECF No. 11.) Plaintiff was given fourteen days in which to respond. The February 17, 2012 deadline has passed without Plaintiff responding to the Court's Order.

In addition, on February 6, 2012, the Court's January 31, 2012 Order, was returned by the U.S. Postal Service as undeliverable to Plaintiff. Pursuant to Local Rule 183(b),

1 a party appearing in propria persona is required to keep the Court apprised of his or her
2 current address at all times. Local Rule 183(b) provides, in pertinent part:

3 If mail directed to a plaintiff in propria persona by the Clerk is
4 returned by the U.S. Postal Service, and if such plaintiff fails
5 to notify the Court and opposing parties within sixty-three (63)
6 days thereafter of a current address, the Court may dismiss
7 the action without prejudice for failure to prosecute.

8 In the instant case, over 63 days have passed since Plaintiff's mail was returned, and he
9 has not notified the Court of a current address.

10 Local Rule 110 provides that "failure of counsel or of a party to comply with these
11 Rules or with any order of the Court may be grounds for imposition by the Court of any
12 and all sanctions . . . within the inherent power of the Court." District courts have the
13 inherent power to control their dockets and "in the exercise of that power, they may
14 impose sanctions including, where appropriate . . . dismissal of a case." Thompson v.
15 Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with
16 prejudice, based on a party's failure to prosecute an action, failure to obey a court order,
17 or failure to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th
18 Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d
19 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring
20 amendment of a complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988)
21 (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court
22 apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987)
23 (dismissal for failure to comply with a court order); Henderson v. Duncan, 779 F.2d 1421,
24 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local
25 rules).

26 In determining whether to dismiss an action for lack of prosecution, failure to obey
27 a court order, or failure to comply with local rules, the Court must consider several factors:
28 (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to

1 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
2 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
3 Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone, 833 F.2d at 130;
4 Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

5 In the instant case, the Court finds that the public's interest in expeditiously
6 resolving this litigation and the Court's interest in managing its docket weigh in favor of
7 dismissal. The third factor, risk of prejudice to defendants, also weighs in favor of
8 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
9 in prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The
10 fourth factor -- public policy favoring disposition of cases on their merits -- is greatly
11 outweighed by the factors in favor of dismissal discussed herein. Finally, a court's
12 warning to a party that his failure to obey the court's order will result in dismissal satisfies
13 the "consideration of alternatives" requirement. Ferdik v. Bonzelet, 963 F.2d at 1262;
14 Malone, 833 at 132-33; Henderson, 779 F.2d at 1424. The Court's Order expressly stated
15 that Plaintiff was to show cause as to "why the action should not be dismissed without
16 prejudice to allow Plaintiff to refile with the submission of the \$350.00 filing fee." (ECF No.
17 11.) Thus, Plaintiff had adequate warning that dismissal would result from his
18 noncompliance with the Court's Order.

19 Based on the foregoing, the Court RECOMMENDS that this action be DISMISSED
20 based on Plaintiff's failure to obey a court order and failure to update his address.

21 These Findings and Recommendations are submitted to the United States District
22 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).
23 Within fourteen (14) days after being served with these Findings and Recommendations,
24 any party may file written objections with the Court and serve a copy on all parties. Such
25 a document should be captioned "Objections to Magistrate Judge's Findings and
26 Recommendations." Any reply to the objections shall be served and filed within ten days

1 after service of the objections. The parties are advised that failure to file objections within
2 the specified time may waive the right to appeal the District Court's order. Martinez v. Y1
3 st, 951 F.2d 1153 (9th Cir. 1991).
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6 IT IS SO ORDERED.

7 Dated: May 4, 2012

1st Michael J. Seng
UNITED STATES MAGISTRATE JUDGE