

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
EASTERN DISTRICT OF CALIFORNIA

ANTONIO MALDONADO,

Plaintiff,

v.

BENOV, et al.,

Defendants.

CASE NO. 1:10-cv-02346-AWI-MJS

FINDINGS AND RECOMMENDATION FOR
DISMISSAL OF PLAINTIFF'S ACTION
WITH PREJUDICE

(ECF NOS. 9, 11)

OBJECTIONS DUE WITHIN FOURTEEN
(14) DAYS

_____ /

On December 16, 2010, Plaintiff Antonio Maldonado, a federal prisoner proceeding pro se and in forma pauperis filed this civil rights action (ECF No. 1) alleging deliberate indifference to medical needs pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). Bivens provides a remedy for violation of civil rights by federal actors. Plaintiff declined Magistrate Judge jurisdiction. (ECF No. 7.)

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous, malicious," or that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from

1 such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion
2 thereof, that may have been paid, the court shall dismiss the case at any time if the court
3 determines that ... the action or appeal ... fails to state a claim upon which relief may be
4 granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

5 After screening, Plaintiff’s original Complaint was dismissed, but he was given leave
6 to amend provided he did so on or before January 19, 2012. (ECF No. 9.) The Court’s
7 Order Dismissing Complaint was served by mail but returned as undeliverable on
8 December 27, 2011.¹

9 The Court then Ordered that by not later than March 21, 2012, Plaintiff either file an
10 amended complaint with a current address or show cause why this case should not be
11 dismissed for failure to state a claim, failure to comply with a Court Order and failure to
12 prosecute. (ECF No. 11.) Plaintiff was advised that a failure to meet this deadline would
13 result in the dismissal of this action subject to the “three strikes” provision set forth in 28
14 U.S.C. § 1915(g). Silva v. Di Vittorio 658 F.3d 1090 (9th Cir. 2011). The Court’s said Order
15 was served by mail but returned as undeliverable on March 13, 2012. Plaintiff has not
16 responded to it in any ay.

17 Local Rule 110 provides that “failure of counsel or of a party to comply with these
18 Rules or with any order of the Court may be grounds for imposition by the Court of any and
19 all sanctions . . . within the inherent power of the Court.” District courts have the inherent
20 power to control their dockets and “in the exercise of that power, they may impose
21 sanctions including, where appropriate . . . dismissal of a case.” Thompson v. Housing
22 Auth., 782 F.2d 829, 831-32 (9th Cir. 1986). A court may dismiss an action, with prejudice,
23 based on a party’s failure to prosecute an action, failure to obey a court order, or failure to
24 comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)
25 (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61

26
27 ¹ Local Rule 183 (b) provides that a party appearing in propria persona shall keep the Court and
28 opposing parties advised as to his or her current address and that a failure to provide a current address
within 63 days of returned mail is grounds for dismissal of the action for failure to prosecute.

1 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of
2 complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to
3 comply with local rule requiring pro se plaintiffs to keep court apprised of address); Malone
4 v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply
5 with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal
6 for lack of prosecution and failure to comply with local rules).

7 In determining whether to dismiss an action for lack of prosecution, failure to obey
8 a court order, or failure to comply with local rules, the court must consider several factors:
9 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage
10 its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
11 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
12 Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone, 833 F.2d at 130;
13 Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

14 In the instant case, the Court finds that the public's interest in expeditiously resolving
15 litigation and the Court's interest in managing its docket weigh in favor of dismissal. In
16 these respects, the Court has a vast caseload before it and can not indulge Plaintiff's
17 disregard of its Orders and Rules. The third factor, risk of prejudice to the Defendants, also
18 weighs in favor of dismissal, since a presumption of injury arises from delay in resolving
19 an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor --
20 public policy favoring disposition of cases on their merits -- is greatly outweighed by the
21 factors in favor of dismissal discussed herein. Given Plaintiff's non-responsiveness to the
22 Court's earlier orders and his pro se and in forma pauperis status, "less drastic
23 alternatives" other than those taken to date (i.e., repeated orders to Plaintiff to comply) do
24 not exist and the ultimate sanction of dismissal is warranted. Malone, 833 at 132-33.

25 Plaintiff's Complaint fails to state any cognizable federal claim. He has failed to keep
26 the Court and opposing parties apprised of his current address and failed to comply with
27 the Court's Local Rules and repeated Orders. No lesser sanction than dismissal is
28

1 appropriate.

2 Accordingly, it is **RECOMMENDED** that this matter be **DISMISSED by the District**
3 **Judge.**

4 These findings and recommendations are submitted to the United States District
5 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).
6 Within fourteen (14) days after being served with these Findings and Recommendation,
7 any party may file written objections with the Court and serve a copy on all parties. Such
8 a document should be captioned "Objections to Magistrate Judge's Findings and
9 Recommendation." Any reply to the Objections shall be served and filed within ten (10)
10 days after service of the Objections. The parties are advised that failure to file objections
11 within the specified time may waive the right to appeal the District Court's order. Martinez
12 v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

13
14
15 IT IS SO ORDERED.

16 Dated: March 28, 2012

/s/ Michael J. Seng
17
18
19
20
21
22
23
24
25
26
27
28
UNITED STATES MAGISTRATE JUDGE