

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

HUGO BARRIGA,

1:11-cv-01545-AWI-GSA-PC

Plaintiff,

FINDINGS AND RECOMMENDATION TO
DISMISS CASE FOR FAILURE TO OBEY A
COURT ORDER

v.

ENOMOTO, et al.,

OBJECTIONS, IF ANY, DUE IN THIRTY
DAYS

Defendants.

_____/

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. On November 1, 2011, the court issued an order requiring plaintiff to complete and return the Court's form for consent or decline of Magistrate Judge jurisdiction, within thirty days. The thirty day period has now expired, and plaintiff has not returned the form or otherwise responded to the court's order.¹

Local Rule 110 provides that “failure of counsel or of a party to comply with these Rules or with any order of the Court may be grounds for imposition by the Court of any and all sanctions . . . within the inherent power of the Court.” In determining whether to dismiss this action for failure to comply with the directives set forth in its order, “the Court must weigh the

¹The United States Postal Service returned the order on November 10, 2011 as undeliverable. A notation on the envelope indicates that Plaintiff is not in custody. However, plaintiff has not notified the court of any change in his address since September 29, 2011. Absent such notice, service at a party’s prior address is fully effective. Local Rule 182(f).

1 following factors: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s
2 need to manage its docket; (3) the risk of prejudice to defendants/respondents; (4) the availability
3 of less drastic alternatives; and (5) the public policy favoring disposition of cases on their
4 merits.” Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963
5 F.2d 1258, 1260-61 (9th Cir. 1992)).

6 “The public’s interest in expeditious resolution of litigation always favors dismissal,”
7 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the
8 action has been pending for more than five months. Plaintiff’s failure to keep the Court apprised
9 of his current address may reflect Plaintiff’s lack of interest in prosecuting his case. In such an
10 instance, the Court cannot continue to expend its scarce resources assisting a litigant who has not
11 taken steps to ensure that he will receive the Court’s mail. Thus, both the first and second factors
12 weigh in favor of dismissal.

13 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in
14 and of itself to warrant dismissal.” Id. (citing Yourish at 991). However, “delay inherently
15 increases the risk that witnesses’ memories will fade and evidence will become stale,” id., and it
16 is plaintiff’s failure to notify the Court of his current address that is causing delay. Therefore, the
17 third factor weighs in favor of dismissal.

18 As for the availability of lesser sanctions, at this stage in the proceedings there is little
19 available to the Court which would constitute a satisfactory lesser sanction while protecting the
20 Court from further unnecessary expenditure of its scarce resources. Plaintiff is proceeding in
21 forma pauperis in this action, making monetary sanctions of little use, and given the early stage
22 of these proceedings, the preclusion of evidence or witnesses is not available. However,
23 inasmuch as the dismissal being considered in this case is without prejudice, the Court is
24 stopping short of issuing the harshest possible sanction of dismissal with prejudice.

25 Finally, because public policy favors disposition on the merits, this factor will always
26 weigh against dismissal. Id. at 643.

27 Accordingly, the court HEREBY RECOMMENDS that this action be dismissed based on
28 plaintiff’s failure to obey the court’s order of November 1, 2011.

