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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JESSICA WILLIAMS,

1:12-cv-00846-LJO-GSA-PC

Plaintiff,

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

v.

DIRECTOR OF CDCR, 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 May 24, 2012, the court issued an order requiring plaintiff to file an Amended Complaint and return the Court's consent/decline form within thirty days. The thirty day period has now expired, and plaintiff has not filed an Amended Complaint, returned the consent/decline 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 following factors: (1)

¹The United States Postal Service returned the order on June 4, 2012 as undeliverable. A notation on the envelope indicates that Plaintiff was discharged and the mail was refused. However, plaintiff has not notified the court of any change in her address. Absent such notice, service at a party’s prior address is fully effective. Local Rule 182(f).

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

5
6 "The public's interest in expeditious resolution of litigation always favors dismissal," id.
7 (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the action
8 has been pending since May 24, 2012. Plaintiff's failure to keep the Court apprised of her current
9 address may reflect Plaintiff's lack of interest in prosecuting her case. In such an instance, the Court
10 cannot continue to expend its scarce resources assisting a litigant who has not taken steps to ensure
11 that she will receive the Court's mail. Thus, both the first and second factors weigh in favor of
12 dismissal.

13 Turning to the risk of prejudice, "pendency of a lawsuit is not sufficiently prejudicial in and
14 of itself to warrant dismissal." Id. (citing Yourish at 991). However, "delay inherently increases the
15 risk that witnesses' memories will fade and evidence will become stale," id., and it is plaintiff's
16 failure to notify the Court of her current address that is causing delay. Therefore, the third factor
17 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 forma
21 pauperis in this action, making monetary sanctions of little use, and given the early stage of these
22 proceedings, the preclusion of evidence or witnesses is not available. However, inasmuch as the
23 dismissal being considered in this case is without prejudice, the Court is stopping short of issuing
24 the harshest possible sanction of dismissal with prejudice.

25 Finally, because public policy favors disposition on the merits, this factor will always weigh
26 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 May 24, 2012.

