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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PATRICK JOSEPH SHARIT,

Plaintiff,

v.

STANISLAUS COUNTY HEALTH
SERVICE AGENCY,

Defendant.

Case No. 1:13-cv-1192 AWI-BAM

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF
THIS CASE

Plaintiff Patrick Sharit (“Plaintiff”) is a state prisoner proceeding *pro se* in this action filed on July 26, 2013, together with a request to proceed in forma pauperis. (Docs. 1, 2). On August 28, 2013, the Court screened Plaintiff’s complaint and determined he failed to state a cognizable claim. (Doc. 7). The Court dismissed the complaint with leave to amend, and ordered Plaintiff to file an amended complaint within thirty days of the date of service, or no later than September 28, 2013.

On September 20, 2013, the Court’s Order that had been properly served on Plaintiff at the Deuel Vocational Institution, Post Office Box 400, Tracy, California 95378, was returned by the postal service marked “Undeliverable, Paroled.”

On December 17, 2013, this Court issued an Order to Show Cause Why this Case Should Not

1 be Dismissed for Plaintiff's failure to keep the Court apprised of his address pursuant to Local Rule
2 182(f). (Doc. 8). Pursuant to Local Rule 183(b), if an address is not updated within sixty days of the
3 mail being returned, the action will be dismissed for failure to prosecute. Local Rule 183(b). On
4 January 2, 2014, this order addressed to Plaintiff at the Deuel Vocational Institution was also returned
5 by the postal service marked "Undeliverable, Paroled." In light of the above, the Court recommends
6 dismissal of this action.

7 DISCUSSION

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

22 In determining whether to dismiss an action for lack of prosecution, failure to obey a court
23 order, or failure to comply with local rules, the court must consider several factors: (1) the public's
24 interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
25 prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5)
26 the availability of less drastic alternatives. *Thompson v. Housing Auth.*, 782 F.2d at 831; *Henderson v.*
27 *Duncan*, 779 F.2d at 1423-24; *Malone v. U.S. Postal Service*, 833 F.2d at 130; *Ferdik*, 963 F.2d at
28 1260-61; *Ghazali v. Moran*, 46 F.3d at 53.

1 In the instant case, the Court finds that the public’s interest in expeditiously resolving this
2 litigation and the Court’s interest in managing the docket weigh in favor of dismissal. Plaintiff has
3 failed to comply with Local Rule 182(f) that requires Plaintiff to keep the Court apprised of his
4 address so that he may participate in this litigation. More than sixty days have passed since the first
5 order was returned to the Court as undeliverable. In accordance with this Court’s Local Rules, the
6 matter should be dismissed. Local Rule 183(b).

7 The third factor, risk of prejudice to defendants, also weighs in favor of dismissal, since a
8 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.
9 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor, the public policy favoring
10 the disposition of cases on the merits is also met. While the public’s interest certainly favors
11 resolution of cases on the merits, the public has an equal, if not greater interest in ensuring confidence
12 in our judicial system and in the speedy and fair administration of justice. Here, there will be no
13 resolution of this case given Plaintiff’s failure to advise the Court of his new address. Finally, a
14 court's warning to a party that his failure to obey the court’s order will result in dismissal satisfies the
15 “consideration of alternatives” requirement. *Ferdik v. Bonzelet*, 963 F.2d at 1262; *Malone v. U.S.*
16 *Postal Service*, 833 at 132-33; *Henderson v. Duncan*, 779 F.2d at 1424. In this case, the Court’s order
17 expressly stated, “In the event Plaintiff fails to show cause for his failure, this Court will recommend
18 dismissal of the action in its entirety.” (Doc. 8, pg. 3). Thus, Plaintiff had adequate warning that
19 dismissal would result from noncompliance with the Court’s order.

20 **CONCLUSION AND RECOMMENDATION**

21 Accordingly, the Court **HEREBY RECOMMENDS** that this action be dismissed, with
22 prejudice, based on Plaintiff’s failure to obey the Court’s order, failure to comply with Local Rules,
23 and a failure to prosecute the action.

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