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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

THUAN HUY HA,  
Plaintiff,  
v.  
U.S. DEPARTMENT OF JUSTICE/  
EXECUTIVE OFFICE FOR U.S.  
ATTORNEYS,  
Defendant.

Case No. 1:13-cv-01588-LJO-MJS  
**FINDINGS AND RECOMMENDATION TO  
DISMISS ACTION FOR A FAILURE TO  
FOLLOW COURT ORDER**

On October 3, 2013, Thuan Huy Ha (“Plaintiff”), a prisoner proceeding *pro se* and *in forma pauperis*, filed an action under the Freedom of Information Act, 5 U.S.C. § 552. (Compl., ECF 1.) The Court screened Plaintiff’s Complaint on September 11, 2015, found that it stated a claim against the Executive Office for United States Attorneys, and directed Plaintiff to file, on or before October 11, 2015, documents necessary to effectuate service. (ECF No. 9.) According to the Court’s docket, the order was returned as undeliverable. The October 11, 2015, deadline to submit service documents has

1 passed and on October 16, 2015, the Court issued a second order to submit service  
2 documents or show cause why the case should not be dismissed for failure to comply  
3 with a court order. (ECF No. 10.) Over thirty (30) days have passed, and according to  
4 the Court's docket, the order was returned as undeliverable.

5 Plaintiff has not responded to the Court's September 14 and October 16, 2015,  
6 Orders, despite the thirty day deadlines for doing so. Moreover, because the Court's  
7 orders were returned as undeliverable, it appears Plaintiff's current mailing address is  
8 incorrect, and he has not complied with Local Rule 182(f), which provides that "Each  
9 appearing ... pro se party is under a continuing duty to notify the Clerk and all other  
10 parties of any change of address ...." E.D. Local Rule 182(f).

11 **I. DISCUSSION**

12 Local Rule 110 provides that "[f]ailure of counsel or of a party to comply with  
13 these Rules or with any order of the Court may be grounds for imposition by the Court of  
14 any and all sanctions . . . within the inherent power of the Court." District courts have the  
15 inherent power to control their dockets and "in the exercise of that power, they may  
16 impose sanctions including, where appropriate . . . dismissal of a case." Thompson v.  
17 Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with  
18 prejudice, based on a party's failure to prosecute an action, failure to obey a court order,  
19 or failure to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th  
20 Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d  
21 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring  
22 amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988)  
23 (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court  
24 apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987)  
25 (dismissal for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421,  
26 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local  
27 rules). In determining whether to dismiss an action for lack of prosecution, failure to obey  
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1 a court order, or failure to comply with local rules, the court must consider several  
2 factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need  
3 to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy  
4 favoring disposition of cases on their merits; and (5) the availability of less drastic  
5 alternatives. Ghazali, 46 F.3d at 53; Ferdik, 963 F.2d at 1260-61; Malone, 833 F.2d at  
6 130; Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24.

7 In the instant case, the Court finds that the public's interest in expeditiously  
8 resolving this litigation and the Court's interest in managing the docket weigh in favor of  
9 dismissal because it does not appear that Plaintiff has made a good faith effort to  
10 prosecute this matter. Plaintiff has twice been ordered to provide documents for service,  
11 but has not done so. Moreover, he has not provided the Court a correct mailing address,  
12 thereby preventing the Court the ability to communicate with the Plaintiff.

13 The third factor, risk of prejudice to defendants, also weighs in favor of dismissal  
14 because a presumption of injury arises from any unreasonable delay in prosecuting an  
15 action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor, public  
16 policy favoring disposition of cases on their merits, is greatly outweighed by the factors in  
17 favor of dismissal. Finally, a court's warning to a party that his failure to obey the court's  
18 order will result in dismissal satisfies the "consideration of alternatives" requirement.  
19 Ferdik, 963 F.2d at 1262; Malone, 833 F.2d at 132-33; Henderson, 779 F.2d at 1424.  
20 Here, the Court's order was clear that dismissal would result from non-compliance with  
21 the order. (See ECF No. 10.)

## 22 **II. RECOMMENDATION**

23 Accordingly, the Court HEREBY RECOMMENDS that this action be DISMISSED  
24 for Plaintiff's failure to comply with a court order.

25 This Findings and Recommendation is submitted to the assigned United States  
26 District Court Judge, pursuant to the provisions of Title 28 of the United States Code  
27 section 636 (b)(1)(B). Within thirty (30) days after being served with a copy, any party

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may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendation." The Court will then review the Magistrate Judge's ruling pursuant to Title 28 of the United States Code section 636(b)(1)(C). The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014).

IT IS SO ORDERED.

Dated: January 14, 2016

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE