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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GARY DALE BARGER,
Plaintiff,
v.
SCOTT TURPIN,
Defendant.

Case No. 1:13-cv-01877 LJO DLB PC
FINDINGS AND RECOMMENDATIONS
REGARDING DISMISSAL OF ACTION FOR
FAILURE TO FOLLOW COURT ORDER
AND FAILURE TO PROSECUTE
THIRTY DAY OBJECTION DEADLINE

Plaintiff Gary Dale Barger (“Plaintiff”) is a California state prisoner proceeding pro se in this civil action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on November 12, 2013. The action was transferred to this Court on November 18, 2013.

On November 21, 2013, the Court issued an order directing Plaintiff to either file an application to proceed in forma pauperis, or pay the filing fee, within 45 days of the date of service of the order.

On December 16, 2013, the order, along with other documents that the Court had sent to Plaintiff, were returned by the United States Postal Office as “Undeliverable, Return to Sender, not Deliverable as Addressed.”

Plaintiff has not filed a notice of change of address pursuant to Local Rule 183(b), and he has not otherwise been in contact with the Court.

1 Plaintiff is required to keep the Court apprised of his current address at all times, and Local
2 Rule 183(b) provides, “If mail directed to a plaintiff in propria persona by the Clerk is returned by
3 the U.S. Postal Service, and if such plaintiff fails to notify the Court and opposing parties within
4 sixty-three (63) days thereafter of a current address, the Court may dismiss the action without
5 prejudice for failure to prosecute.” Federal Rule of Civil Procedure 41(b) also provides for dismissal
6 of an action for failure to prosecute.¹

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

21 In determining whether to dismiss an action for lack of prosecution, failure to obey a court
22 order, or failure to comply with local rules, the court must consider several factors: (1) the public’s
23 interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk
24 of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and
25 (5) the availability of less drastic alternatives. *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at

26
27 ¹Courts may dismiss actions sua sponte under Rule 41(b) based on the plaintiff’s failure to prosecute. *Hells Canyon*
28 *Preservation Council v. U. S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) (citation omitted).

1 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

2 In the instant case, the Court finds that the public’s interest in expeditiously resolving this
3 litigation and the Court’s interest in managing the docket weigh in favor of dismissal. This action
4 has been pending since November 12, 2013, and Plaintiff has not contacted the Court in any way.

5 The third factor, risk of prejudice to Defendants, also weighs in favor of dismissal, since a
6 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.
7 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

8 With respect to the fourth factor, “public policy favoring disposition of cases on their merits
9 strongly counsels against dismissal,” but “this factor lends little support to a party whose
10 responsibility it is to move a case toward disposition on the merits but whose conduct impedes
11 progress in that direction.” *Id.* at 1228.

12 Finally, given the Court’s inability to communicate with Plaintiff, there are no other
13 reasonable alternatives available to address Plaintiff’s failure to prosecute. *In re*
14 *Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1228-1229 (9th Cir.
15 2006); *Carey*, 856 F.2d at 1441.

16 The Court also notes that a civil action may not proceed absent the submission of either the
17 filing fee or a completed application to proceed in forma pauperis. 28 U.S.C. §§ 1914, 1915. Based
18 on Plaintiff’s failure to comply with the Court’s order, dismissal of this action is appropriate. *In re*
19 *PPA*, 460 F.3d at 1226; Local Rule 110.

20 **FINDINGS AND RECOMMENDATIONS**

21 The Court therefore recommends that this action be dismissed for Plaintiff’s failure to follow
22 a Court order and failure to prosecute.

23 These Findings and Recommendations will be submitted to the United States District Judge
24 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)
25 days after being served with these Findings and Recommendations, Plaintiff may file written
26 objections with the court. The document should be captioned “Objections to Magistrate Judge’s
27
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1 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the
2 specified time may waive the right to appeal the District Court’s order. *Martinez v. Ylst*, 951 F.2d
3 1153 (9th Cir. 1991).

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5 IT IS SO ORDERED.

6 Dated: March 5, 2014

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE

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