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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CRESENCIO BARRAZA,

Plaintiff,

v.

SIX UNKNOWN AGENTS, et al.,

Defendants.

Case No. 1:13-cv-01924-AWI-MJS (PC)

**FINDINGS AND RECOMMENDATIONS
FOR DISMISSAL OF ACTION FOR
FAILURE TO OBEY COURT ORDER
AND FAILURE TO PROSECUTE**

(ECF No. 2)

**OBJECTIONS DUE WITHIN FOURTEEN
DAYS**

On November 25, 2013, a civil complaint bearing the name of Cresencio Barraza (“Plaintiff”) was received and filed.¹ The complaint was ordered stricken from the record because it was unsigned and stated no intelligible claim for relief. (ECF No. 2.) Plaintiff was ordered, by not later than January 6, 2014, to file a signed complaint and either file

¹ The complaint arrived in an envelope with six other complaints, all with different plaintiffs. The envelope bore the name of Young Yil Jo, who is also at the Etowah County Jail. Mr. Jo’s abusive litigation tactics are well known in this district. Based on Mr. Jo’s filing history and the lack of a signature on the complaint, the undersigned can not determine whether or not Mr. Barraza authorized the filing of this action. Mr. Jo is not an attorney and he is precluded from filing cases on the behalf of anyone but himself. Johns v. County of San Diego, 114 F.3d 874, 877 (9th Cir. 1997); C. E. Pope Equity Trust v. United States, 818 F.2d 696, 697 (9th Cir. 1987).

1 a motion seeking leave to proceed in forma pauperis or pay the \$400.00 filing fee for
2 this action. (Id.) Plaintiff was warned that failure to comply with the order would result in
3 dismissal of the action. (Id.)

4 The order striking the complaint, served by mail upon Plaintiff at his address of
5 record, was returned on December 23, 2013 as undeliverable (refused). The January 6,
6 2014 deadline passed without Plaintiff responding to the order.

7 Service of the order at Plaintiff's address of record is fully effective. Local Rule
8 182(f). Plaintiff has failed to comply with the order, and has failed to prosecute this
9 action. His refusal of Court mail reasonably suggests he has no interest in proceeding
10 with this action.

11 Local Rule 110 provides that "failure of counsel or of a party to comply with these
12 Rules or with any order of the Court may be grounds for imposition by the Court of any
13 and all sanctions . . . within the inherent power of the Court." District courts have the
14 inherent power to control their dockets and "in the exercise of that power, they may
15 impose sanctions including, where appropriate . . . dismissal of a case." Thompson v.
16 Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with
17 prejudice, based on a party's failure to prosecute, failure to obey a court order, or failure
18 to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)
19 (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-
20 61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of
21 a complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for
22 failure to comply with local rule requiring pro se plaintiffs to keep court apprised of
23 address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal
24 for failure to comply with a court order); Henderson v. Duncan, 779 F.2d 1421, 1424
25 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

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

6 The Court finds that the public's interest in expeditiously resolving this litigation
7 and the Court's interest in managing the docket weigh in favor of dismissal. The Court
8 cannot hold this case in abeyance indefinitely based on Plaintiff's failure to prosecute.
9 The third factor, risk of prejudice to the Defendants, also weighs in favor of dismissal,
10 since a presumption of injury arises from the occurrence of unreasonable delay in
11 prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The
12 fourth factor - public policy favoring disposition of cases on their merits - is greatly
13 outweighed by the factors in favor of dismissal discussed herein. Finally, given the
14 Court's inability to communicate with Plaintiff based on his refusal of Court mail, no
15 lesser sanction is feasible.

16 Having balanced these factors, the undersigned finds they weigh in favor of
17 dismissal and accordingly HEREBY RECOMMENDS that this action be dismissed
18 without prejudice based on Plaintiff's failure to obey the Court's order and failure to
19 prosecute.

20 These findings and recommendations are submitted to the United States District
21 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).
22 Within fourteen (14) days after being served with these findings and recommendations,
23 any party may file written objections with the Court and serve a copy on all parties. Such
24 a document should be captioned "Objections to Magistrate Judge's Findings and
25 Recommendations."

26 The parties are advised that failure to file objections within the specified time may
27 waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153,
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1156 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: January 22, 2014

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE