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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SEAN R. ROBERTS,  
Plaintiff,  
v.  
H.M. LACKNER, et al.,  
Defendants.

Case No. 1:14-cv-01949-LJO-MJS (PC)

**FINDINGS AND RECOMMENDATIONS  
TO DISMISS ACTION FOR FAILURE TO  
PROVIDE A CURRENT ADDRESS AND  
FAILURE TO PROSECUTE**

Plaintiff is a former state prisoner proceeding pro se in this civil rights action brought pursuant to 42 U.S.C. § 1983. Defendants removed the action to this court on December 3, 2014. (ECF No. 1.) On December 8, 2014, the Clerk’s Office mailed Plaintiff the Court’s First Informational Order and an Order Regarding Consent or Request for Reassignment. (ECF No. 5.) On December 19, 2014, Plaintiff’s mail was returned as undeliverable. Plaintiff has not provided the Court with his current address.

Local Rule 183(b) requires a party proceeding pro se to keep the Court apprised of his current address: “If mail directed to a plaintiff in propria persona by the Clerk is returned by the U.S. Postal service, and if such plaintiff fails to notify the Court and opposing parties within sixty-three (63) days thereafter of a current address, the Court may dismiss the action without prejudice for failure to prosecute.”

Further, District courts have the inherent power to control their dockets and “in

1 the exercise of that power, they may impose sanctions including, where appropriate  
2 default or dismissal.” Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A  
3 court may dismiss an action based on a party’s failure to prosecute, failure to obey a  
4 court order, or failure to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52,  
5 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet,  
6 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order  
7 requiring amendment of a complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir.  
8 1988) (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep  
9 court apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir.  
10 1987) (dismissal for failure to comply with a court order); Henderson v. Duncan, 779  
11 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply  
12 with local rules).

13 In determining whether to dismiss an action for lack of prosecution, failure to  
14 obey a court order, or failure to comply with local rules, the Court must consider several  
15 factors: (1) the public’s interest in expeditious resolution of litigation, (2) the Court’s  
16 need to manage its docket, (3) the risk of prejudice to the defendants, (4) the public  
17 policy favoring disposition of cases on their merits, and (5) the availability of less drastic  
18 alternatives. Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone,  
19 833 F.2d at 130; Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

20 In the instant case, the public’s interest in expeditiously resolving this litigation  
21 and the Court’s interest in managing its docket weigh in favor of dismissal. The third  
22 factor, risk of prejudice to Defendants, also weighs in favor of dismissal, since a  
23 presumption of injury arises from the occurrence of unreasonable delay in prosecuting  
24 this action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor –  
25 public policy favoring disposition of cases on their merits – is greatly outweighed by the  
26 factors in favor of dismissal discussed herein. Finally, as for the availability of lesser  
27 sanctions, at this stage in the proceedings there is little available which would constitute  
28 a satisfactory lesser sanction while preserving scarce Court resources. Plaintiff has not

1 responded to the Court's order or otherwise appeared in the action following removal.

2 Accordingly, it is HEREBY RECOMMENDED that the action be DISMISSED  
3 WITHOUT PREJUDICE, based on Plaintiff's failure to provide a current address and  
4 failure to prosecute.

5 These findings and recommendations are submitted to the United States District  
6 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within  
7 fourteen (14) days after being served with these Findings and Recommendations, any  
8 party may file written objections with the Court and serve a copy on all parties. Such a  
9 document should be captioned "Objections to Magistrate Judge's Findings and  
10 Recommendations." Any reply to the objections shall be served and filed within fourteen  
11 (14) days after service of the objections. The parties are advised that failure to file  
12 objections within the specified time may result in the waiver of rights on appeal.  
13 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923  
14 F.2d 1391, 1394 (9th Cir. 1991)).

15  
16 IT IS SO ORDERED.

17  
18 Dated: March 4, 2015

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE