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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

CHARLES GOODS, ) Case No.: 1:17-cv-01009-DAD-JLT  
 )  
 Plaintiff, ) FINDINGS AND RECOMMENDATIONS  
 ) DISMISSING THE ACTION WITHOUT  
 v. ) PREJUDICE  
 )  
 BAKERSFIELD POLICE DEPT., )  
 )  
 Defendant. )

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Charles Goods seeks to proceed *pro se* and *in forma pauperis* in this action against the Bakersfield Police Department for a violation of his civil rights. Because Plaintiff has failed to comply with the Local Rules and failed to prosecute this action, the Court recommends the matter be **DISMISSED** without prejudice.

**I. Background**

Plaintiff initiated this action by filing a complaint on July 31, 2017. (Doc. 1) The Court reviewed the allegations in the complaint pursuant to 28 U.S.C. 1915(e)(2), and determined Plaintiff failed to clearly identify the cause of action upon which he seeks to proceed. (Doc. 4) Further, the facts alleged were insufficient for the Court to determine Plaintiff stated a cognizable claim. (*Id.* at 7-8) Therefore, the Court dismissed the complaint with leave to amend. (*Id.* at 8)

On September 19, 2017, the order was returned to the Court as “undeliverable” by the United States Post Office. To date, Plaintiff’s forwarding address remains unknown, because he has not filed a

1 “Notice of Change of Address” with the Court.

2 **II. Requirements of the Local Rules**

3 Pursuant to Local Rule 183(b), a party appearing in propria persona is required to keep the  
4 Court apprised of his current address: “If mail directed to a plaintiff in propria persona by the Clerk is  
5 returned by the U.S. Postal Service, and if such plaintiff fails to notify the Court and opposing parties  
6 within sixty-three (63) days thereafter of a current address, the Court may dismiss the action without  
7 prejudice for failure to prosecute.” LR 183(b). Because more than 63 days have passed since the  
8 document was returned as undeliverable because Plaintiff was paroled, he has failed to comply with  
9 the Local Rules.

10 **III. Failure to Prosecute**

11 “District courts have inherent power to control their dockets,” and in exercising that power, a  
12 court may impose sanctions including dismissal of an action. *Thompson v. Housing Authority of Los*  
13 *Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action with prejudice, based on a  
14 party’s failure to prosecute an action or failure to obey a court order, or failure to comply with local  
15 rules. *See, e.g., Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 2995) (dismissal for failure to comply  
16 with local rules); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to  
17 comply with an order requiring amendment of complaint); *Henderson v. Duncan*, 779 F.2d 1421, 1424  
18 (9th Cir. 1986) (dismissal for failure to prosecute and to comply with local rules).

19 In determining whether to dismiss an action for failure to prosecute, failure to comply with the  
20 Local Rules, or failure to obey a court order, the Court must consider several factors, including: “(1)  
21 the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket;  
22 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their  
23 merits; and (5) the availability of less drastic sanctions.” *Henderson*, 779 F.2d at 1423-24; *see also*  
24 *Ferdik*, 963 F.2d at 1260-61; *Thompson*, 782 F.2d at 831.

25 **IV. Discussion and Analysis**

26 To determine whether to dismiss an action for failure to prosecute and failure to comply with  
27 the Local Rules, the Court must consider several factors, including: “(1) the public’s interest in  
28 expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice

1 to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the  
2 availability of less drastic sanctions.” *Henderson*, 779 F.2d at 1423-24; *see also Ferdik*, 963 F.2d at  
3 1260-61; *Thomson*, 782 F.2d at 831.

4 **A. Public interest and the Court’s docket**

5 In the case at hand, the public’s interest in expeditiously resolving this litigation and the  
6 Court’s interest in managing the docket weigh in favor of dismissal. *See Yourish v. Cal. Amplifier*,  
7 191 F.3d 983, 990 (9th Cir. 1999) (“The public’s interest in expeditious resolution of litigation always  
8 favors dismissal”); *Ferdik*, 963 F.2d at 1261 (recognizing that district courts have inherent interest in  
9 managing their dockets without being subject to noncompliant litigants). This Court cannot, and will  
10 not hold, this case in abeyance based upon Plaintiff’s failure to comply with the Local Rules and  
11 failure to take action to continue prosecution in a timely manner. *See Morris v. Morgan Stanley &*  
12 *Co.*, 942 F.2d 648, 652 (9th Cir. 1991) (explaining a plaintiff has the burden “to move toward...  
13 disposition at a reasonable pace, and to refrain from dilatory and evasive tactics”). Accordingly, these  
14 factors weigh in favor of dismissal of the action.

15 **B. Prejudice to Defendant**

16 To determine whether the defendant has been prejudiced, the Court must “examine whether the  
17 plaintiff’s actions impair the ... ability to go to trial or threaten to interfere with the rightful decision of  
18 the case.” *Malone*, 833 F.2d at 131 (citing *Rubin v. Belo Broadcasting Corp.*, 769 F.2d 611, 618 (9th  
19 Cir. 1985)). Significantly, a presumption of prejudiced arises when a plaintiff unreasonably delays the  
20 prosecution of an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). Here, Plaintiff  
21 has not taken any action to prosecute the action. Accordingly, this factor weighs in favor of dismissal.

22 **C. Consideration of less drastic sanctions**

23 The Court “abuses its discretion if it imposes a sanction of dismissal without first considering  
24 the impact of the sanction and the adequacy of less drastic sanctions.” *United States v. Nat’l Medical*  
25 *Enterprises, Inc.*, 792 F.2d 906, 912 (9th Cir. 1986). However, no lesser sanction is feasible given the  
26 Court’s inability to communicate with Plaintiff.

27 **D. Public policy**

28 Given Plaintiff’s failure to comply with the Local Rules and failure to prosecute the action, the

1 policy favoring disposition of cases on their merits is outweighed by the factors in favor of dismissal.  
2 *See Malone*, 833 F.2d at 133, n.2 (explaining that although “the public policy favoring disposition of  
3 cases on their merits . . . weighs against dismissal, it is not sufficient to outweigh the other four  
4 factors”).

5 **V. Findings and Recommendations**

6 Plaintiff has failed to follow the requirements of the Local Rules or to prosecute this action.  
7 As set forth above, the factors set forth by the Ninth Circuit weigh in favor of dismissal of the matter.  
8 Accordingly, the Court **ORDERS**:

- 9 1. This action be **DISMISSED** without prejudice; and
- 10 2. The Clerk of Court be directed to close this action.

11 These Findings and Recommendations are submitted to the United States District Judge  
12 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local  
13 Rules of Practice for the United States District Court, Eastern District of California. Within fourteen  
14 days after being served with these Findings and Recommendations, Plaintiff may file written objections  
15 with the court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and  
16 Recommendations.” Plaintiff is advised that failure to file objections within the specified time may  
17 waive the right to appeal the District Court’s order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991);  
18 *Wilkerson v. Wheeler*, 772 F.3d 834, 834 (9th Cir. 2014).

19  
20 IT IS SO ORDERED.

21 Dated: November 27, 2017

/s/ Jennifer L. Thurston  
22 UNITED STATES MAGISTRATE JUDGE