

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID HERNANDEZ,

Plaintiff,

v.

CARRANZA, et al.,

Defendants.

Case No. 1:17-cv-01071-SKO (PC)

**ORDER TO SHOW CAUSE WHY THE
ACTION SHOULD NOT BE DISMISSED FOR
PLAINTIFF'S FAILURE TO COMPLY WITH
THE COURT'S ORDER AND FAILURE TO
KEEP HIS ADDRESS OF RECORD UPDATED**

(Doc. 3)

TWENTY-ONE (21) DAY DEADLINE

Plaintiff, David Hernandez, is proceeding *pro se* and *in forma pauperis* in this action under 42 U.S.C. § 1983. Plaintiff filed this action on August 10, 2017.

On August 14, 2017, the First Informational Order issued informing Plaintiff of various requirements to pursue this action, including the requirement to keep his address of record updated, and contained an order for Plaintiff to consent or decline to magistrate judge jurisdiction. (Doc. 3.) Plaintiff was required to return the form indicating his affirmative or negative response to magistrate judge jurisdiction within thirty days. (Doc. 3-1, p. 1.) However, the First Informational Order and the order re magistrate judge jurisdiction were returned by the United States Postal Service on September 5, 2017, as undeliverable and not in custody. The order granting Plaintiff's motion to proceed *in forma pauperis* that issued on August 16, 2017, was likewise previously returned on August 29, 2017, as undeliverable and unable to forward.

A *pro se* plaintiff must keep the Court and opposing parties informed of the party's correct address. Local Rule 182(f). If a party moves to a different address without filing and serving a

1 notice of change of address, documents served at a party's old address of record shall be deemed
2 received even if not actually received. *Id.* If mail directed to a *pro se* plaintiff at the address of
3 record is returned by the United States Postal Service as undeliverable, the order will not be served
4 a second time absent a notice of change of address. If a *pro se* plaintiff's address is not updated
5 within sixty-three (63) days of mail being returned as undeliverable, the case will be dismissed for
6 failure to prosecute. Local Rule 183(b).

7 The Local Rules, corresponding with Fed. R. Civ. P. 11, provide, “[f]ailure of counsel, or
8 of a party to comply with . . . any order of the Court may be grounds for the imposition by the
9 Court of any and all sanctions . . . within the inherent power of the Court.” Local Rule 110.
10 “District courts have inherent power to control their dockets,” and in exercising that power, a court
11 may impose sanctions, including dismissal of an action. *Thompson v. Housing Authority of Los*
12 *Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action with prejudice, based
13 on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with
14 local rules. *See, e.g. Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for
15 failure to comply with an order requiring amendment of complaint); *Malone v. U.S. Postal*
16 *Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with a court order);
17 *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and
18 to comply with local rules).

19 It appears that Plaintiff abandoned this action shortly after its commencement. Whether
20 Plaintiff did so mistakenly or intentionally after being released from custody is inconsequential. It
21 matters not that the First Informational Order was not received, as its mailing was merely a
22 courtesy this Court extends to incarcerated parties who may not otherwise have ready access to the
23 Local Rules. It is Plaintiff's responsibility as the party initiating this action to comply with the
24 Court's Local Rules which require Plaintiff to keep his address of record updated. The Court
25 declines to expend its limited resources to screen or otherwise address a case that Plaintiff has
26 chosen to ignore.

27 ///

28 //

1 Accordingly, Plaintiff is **ORDERED** to show cause **within 21 days** of the date of service
2 of this order why the action should not be dismissed for both his failure to comply with the
3 Court’s order to consent or decline magistrate judge jurisdiction and to keep his address in this
4 action updated; alternatively, within that same time, Plaintiff may update his address and submit
5 the form indicating whether he consents or declines magistrate judge jurisdiction, or file a notice
6 of voluntary dismissal.

7
8 IT IS SO ORDERED.

9 Dated: **October 23, 2017**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28