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

JAMES RAYMOND,

Plaintiff,

v.

WARREN MARTIN, et al.,

Defendants.

INGRID CRAWFORD SMITH, et al.,

Plaintiffs,

v.

CITY OF BAKERSFIELD, et al.,

Defendants.

A.J.C.,

Plaintiff,

v.

CITY OF BAKERSFIELD, et al.,

Defendants.

) Case No.: 1:18-cv-00307 DAD JLT

)
) FINDINGS AND RECOMMENDATIONS TO
) DISMISS THE CLAIMS OF JAMES RAYMOND
) WITHOUT PREJUDICE AND TO JOIN HIM AS A
) NOMINAL DEFENDANT

Plaintiffs assert the defendants are liable for the wrongful death of Augustus Joshua Crawford. James Raymond, the father of the decedent, initiated this action and proceeded *pro se* with his claims.

1 (See Docs. 1, 5) Because Raymond has failed to comply with the Local Rules and failed to prosecute
2 his claims and has absented himself from this litigation, the Court recommends his claims be dismissed
3 without prejudice, and the action proceed only with the claims of the remaining plaintiffs.

4 **I. Relevant Background**

5 Plaintiff James Raymond initiated this action by filing a complaint on March 5, 2018. (Doc. 1)
6 The Court reviewed the allegations in the complaint pursuant to 28 U.S.C. 1915(e)(2), and determined
7 he stated cognizable claims against Officer Martin for violations of the decedent's right to be free from
8 the use of excessive force and the defendant's failure to provide medical care. (Doc. 5) On November
9 3, 2018, Ingrid Crawford Smith and A.C. also filed a complaint as the successors in interest to the
10 decedent, asserting the City of Bakersfield, Bakersfield Police Department, County of Kern, Chief
11 Martin, and Officer Martin were liable for (1) wrongful death; (2) excessive force in violation of the
12 decedent's civil rights; (3) violations of Cal. Civ. Code §§ 43, 52.1 and the California Constitution; (4)
13 assault; and (5) battery. (See Case No. 1:18-cv-1526-DAD-JLT, Doc. 1) Finally, on September 16,
14 2019, A.J.C. filed a complaint through her guardian ad litem Bryshanique Allen as a successor in
15 interest to the decedent. A.J.C. also sought to hold the City of Bakersfield and the Bakersfield police
16 department liable for the wrongful death of the Crawford, violations of the decedent's civil rights,
17 assault, and battery. (See Case No. 1:19-cv-1302-DAD-JLT, Doc. 1) Because the plaintiffs bring
18 similar claims and present similar questions of fact and law, the three actions were consolidated for all
19 purposes. (See Doc. 65)

20 On June 10, 2021, the Court issued a scheduling order with the applicable deadlines governing
21 the consolidated action. (Doc. 87) The order was served upon James Raymond at the address
22 previously provided by the plaintiff. However, the order was returned as "Not Deliverable as
23 Addressed: Unable to Forward" but the United States Postal Service on June 24, 2021. In advance of
24 that, counsel for the other parties were unable to contact Mr. Raymond to obtain his contribution to the
25 joint scheduling conference statement (Doc. 85 at 2) and have been unable to contact him for some
26 time (Doc. 88). To date, Raymond's new and correct address remains unknown, because he has not
27 filed a "Notice of Change of Address" with the Court.

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

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

9 **III. Failure to Prosecute**

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

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

24 **IV. Discussion and Analysis**

25 To determine whether to dismiss for failure to prosecute and failure to comply with the Local
26 Rules, the Court must consider several factors, including: “(1) the public’s interest in expeditious
27 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the
28 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability

1 of less drastic sanctions.” *Henderson*, 779 F.2d at 1423-24; *see also Ferdik*, 963 F.2d at 1260-61;
2 *Thomson*, 782 F.2d at 831.

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

4 In the case at hand, the public’s interest in expeditiously resolving the claims of James
5 Raymond and the Court’s interest in managing the docket weigh in favor of dismissal of his claims.
6 *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999) (“The public’s interest in expeditious
7 resolution of litigation always favors dismissal”); *Ferdik*, 963 F.2d at 1261 (recognizing that district
8 courts have inherent interest in managing their dockets without being subject to noncompliant
9 litigants). This Court cannot, and will not hold, this case in abeyance based upon his failure to comply
10 with the Local Rules and failure to take action to continue prosecution in a timely manner. *See Morris*
11 *v. Morgan Stanley & Co.*, 942 F.2d 648, 652 (9th Cir. 1991) (explaining a plaintiff has the burden “to
12 move toward... disposition at a reasonable pace, and to refrain from dilatory and evasive tactics”).
13 Accordingly, these factors weigh in favor of dismissal of the claims of James Raymond and allowing
14 the action to proceed only with the active plaintiffs. On the other hand, due to the wrongful death
15 claims brought by the other named plaintiffs, and because Mr. Raymond is the father of the decedent,
16 he should be joined as a nominal defendant in this case. *Cross v. Pacific Gas & Elec. Co.*, 60 Cal. 2d
17 690, 692-93 (1964); *Ruttenberg v. Ruttenberg*, 53 Cal.App.4th 801, 808 (1997).

18 **B. Prejudice to Defendants**

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

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

28 The Court “abuses its discretion if it imposes a sanction of dismissal without first considering

1 the impact of the sanction and the adequacy of less drastic sanctions.” *United States v. Nat’l Medical*
2 *Enterprises, Inc.*, 792 F.2d 906, 912 (9th Cir. 1986). However, no lesser sanction is feasible given the
3 Court’s inability to communicate with Plaintiff. Moreover, the Court recommends that Mr. Raymond
4 be joined as a nominal defendant in this case. *Cross*, 60 Cal.2d 692-93; *Ruttenberg*, 53 Cal.App.4th
5 801, 808 (1997).

6 **D. Public policy**

7 Given Plaintiff’s failure to comply with the Local Rules and failure to prosecute the action, the
8 policy favoring disposition of claims on their merits is outweighed by the factors in favor of dismissal.
9 *See Malone*, 833 F.2d at 133, n. 2 (explaining that although “the public policy favoring disposition of
10 cases on their merits . . . weighs against dismissal, it is not sufficient to outweigh the other four
11 factors”).

12 **V. Findings and Recommendations**

13 Plaintiff James Raymond has failed to follow the requirements of the Local Rules or to
14 prosecute his claims in this action. As set forth above, the factors set forth by the Ninth Circuit weigh
15 in favor of dismissal of his claims. Accordingly, the Court **RECOMMENDS**:

- 16 1. The claims of James Raymond be **DISMISSED** without prejudice;
- 17 2. The action proceed with the claims of Plaintiffs Ingrid Crawford Smith, A.C., A.J.C.;
- 18 3. That James Raymond be joined as a nominal defendant.

19 These Findings and Recommendations are submitted to the United States District Judge
20 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local
21 Rules of Practice for the United States District Court, Eastern District of California. Within fourteen
22 days after being served with these Findings and Recommendations, any party may file written
23 objections with the court. Such a document should be captioned “Objections to Magistrate Judge’s
24 Findings and Recommendations.”

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The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991); *Wilkerson v. Wheeler*, 772 F.3d 834, 834 (9th Cir. 2014).

IT IS SO ORDERED.

Dated: September 15, 2021

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