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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CURTIS MCAFEE,
Plaintiff,

v.

IVANA TOWNSEND, et al.,
Defendants.

Case No. 1:18-cv-00936-DAD-SKO

**FINDINGS AND RECOMMENDATION TO
DISMISS WITH PREJUDICE FOR PLAINTIFF'S
FAILURE TO OBEY COURT ORDER, FAILURE
TO STATE A CLAIM, AND FAILURE TO
PROSECUTE**

(Docs. 1, 9, 11)

TWENTY-ONE (21) DAY DEADLINE

On July 11, 2018, Plaintiff Curtis Mcafee, proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against Ivana Townsend, Elsa Cisneros, and Irene Carrillo, alleging deliberate interference with Plaintiff's parent-child relationship in violation of the Fourteenth Amendment. (Doc. 1.) Plaintiff also filed an application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915, which was granted on July 16, 2018. (Docs. 2 & 3.)

On August 14, 2018, the Court issued a screening order finding that Plaintiff failed to state any cognizable claims, dismissing the Complaint, and granting leave for Plaintiff to file a first amended complaint within thirty (30) days. (Doc. 9.) Although more than the allowed time has passed, Plaintiff has failed to file an amended complaint or otherwise respond to the Court's screening order.

Further, when served at Plaintiff's address of record, the August 14, 2018 screening order was returned as undeliverable on September 19, 2018. Local Rule 183(b) provides that:

1 A party appearing in propria persona shall keep the Court and opposing parties
2 advised as to his or her current address. If mail directed to a plaintiff in propria
3 persona by the Clerk is returned by the U.S. Postal Service, and if such plaintiff
4 fails to notify the Court and opposing parties within sixty-three (63) days
5 thereafter of a current address, the Court may dismiss the action without prejudice
6 for failure to prosecute.

7 L.R. 183(b). More than sixty-three days have lapsed since the screening order was returned as
8 undeliverable and Plaintiff has not contacted the Court to request an extension or to otherwise
9 explain any circumstances that may be preventing him from complying with the order.

10 On December 4, 2018, an order issued for Plaintiff to show cause within twenty-one days
11 why the action should not be dismissed for his failure to comply with the Court's orders, the
12 Local Rules, and for failure to state a claim. (Doc. 11.) Plaintiff has not yet filed any response.

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

25 Based on Plaintiff's failure to comply with, or otherwise respond to, the order that
26 dismissed the complaint and his failure to keep his address updated, there is no alternative but to
27 recommend that the action be dismissed for failure to respond to/obey a court order, failure to
28 prosecute, and failure to state a cognizable claim.

Accordingly, it is **HEREBY RECOMMENDED** that this action be dismissed, with
prejudice, for Plaintiff's failure to obey the Court's order, to prosecute this action, and to state a
cognizable claim.

