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3 **UNITED STATES DISTRICT COURT**

4 EASTERN DISTRICT OF CALIFORNIA

5
6 JOSE LEON HOPTON,
7 Plaintiff,

8 v.

9
10 FRESNO COUNTY HUMAN HEALTH
SYSTEM, et al.,
11 Defendants.

Case No. 1:20-cv-00141-NONE-SKO

**FINDINGS AND RECOMMENDATION
TO DISMISS WITH PREJUDICE FOR
PLAINTIFF’S FAILURE TO OBEY
COURT ORDERS AND LOCAL RULES
AND FAILURE TO PROSECUTE**

(Docs. 14, 15)

TWENTY-ONE (21) DAY DEADLINE

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14 On January 28, 2020, Plaintiff filed the complaint in this case against Defendants. (Doc.
15 1.) Plaintiff also filed a motion to proceed in forma pauperis, which was granted on February 20,
16 2020, after Plaintiff submitted his prisoner trust account statement. (Docs. 3, 4, 6.)

17 On March 3, 2020, the Court issued an order finding that Plaintiff’s complaint failed to
18 state any cognizable claims and granting leave until March 24, 2020, for Plaintiff to file an
19 amended complaint. (Doc. 9.) Plaintiff requested, and the Court granted, an extension of time to
20 file the amended complaint, and Plaintiff filed his first amended complaint (“FAC”) on May 11,
21 2020. (Docs. 10, 11, 12.) The Court issued a second screening order on June 5, 2020, finding that
22 the FAC failed to state a claim and granting Plaintiff until June 26, 2020, to file a second amended
23 complaint. (Doc. 14.) Plaintiff failed to file a second amended complaint or otherwise respond to
24 the Court’s second screening order.

25 On July 21, 2020, an order issued for Plaintiff to show cause (“OSC”) within twenty-one
26 days why the action should not be dismissed for his failure to comply with the Court’s November
27 7, 2018 screening order. (Doc. 15.) When served at Plaintiff’s address of record, the OSC was
28 returned as undeliverable on August 13, 2020. 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). Although more than sixty-three days have passed since the OSC was returned as
8 undeliverable, Plaintiff has neither responded to the OSC, nor contacted the Court to request an
9 extension or to otherwise explain his lack of compliance with the OSC.

10 The Local Rules, corresponding with Fed. R. Civ. P. 11, provide, “[f]ailure of counsel or
11 of a party to comply with . . . any order of the Court may be grounds for the imposition by the
12 Court of any and all sanctions . . . within the inherent power of the Court.” Local Rule 110. *See*
13 *also* Local Rule 183(a). ““District courts have inherent power to control their dockets,” and in
14 exercising that power, a court may impose sanctions, including dismissal of an action. *Thompson*
15 *v. Housing Authority of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an
16 action, with prejudice, based on a party’s failure to prosecute an action or failure to obey a court
17 order, or failure to comply with local rules. *See, e.g., Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61
18 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint);
19 *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply
20 with a court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for
21 failure to prosecute and to comply with local rules).

22 Based on Plaintiff’s failure to comply with, or otherwise respond to, the order screening
23 his complaint, the OSC, and his failure to keep his address updated, there is no alternative but to
24 recommend that the action be dismissed for failure to obey court orders, local court rules, and
25 failure to prosecute this action.

26 Accordingly, it is **HEREBY RECOMMENDED** that this action be dismissed, with
27 prejudice, for Plaintiff’s failure to obey the Court’s orders and local rules and the failure to
28 prosecute this action.

These Findings and Recommendations will be submitted to the United States District
Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1)(B). **Within**

1 **twenty-one (21) days** after being served with these Findings and Recommendations, Plaintiff may
2 file written objections with the Court. The document should be captioned “Objections to
3 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file
4 objections within the specified time may result in the waiver of rights on appeal. *Wilkinson v.*
5 *Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th
6 Cir. 1991)).

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8 IT IS SO ORDERED.

9 Dated: **October 28, 2020**

/s/ Sheila K. Oberto
10 UNITED STATES MAGISTRATE JUDGE
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