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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DAVID ERNESTO MACKEY,  
  
Plaintiff,  
  
v.  
  
PEOPLE OF THE STATE OF  
CALIFORNIA, et al.,  
  
Defendants.

Case No.: 1:21-cv-00793-CDB

**FINDINGS AND RECOMMENDATIONS TO  
DISMISS ACTION FOR PLAINTIFF’S  
FAILURE TO OBEY COURT ORDERS AND  
FAILURE TO PROSECUTE**

**14-DAY OBJECTION PERIOD**

Clerk of the Court to Assign District Judge

Plaintiff David Ernesto Mackey is a civil detainee proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983.

**I. RELEVANT PROCEDURAL BACKGROUND**

Plaintiff initiated this action with the filing of his complaint on May 17, 2021. (Doc. 1.)

On January 6, 2022, the Court issued its Notice of Temporary Magistrate Judge Referral following the elevation of Jennifer L. Thurston to District Judge. (Doc. 6.) The order was served by mail to Plaintiff’s address on record with the Court the following day.

On January 18, 2022, the order was returned to the Court by the United States Postal Service marked “Undeliverable, Refused.”

On October 6, 2022, the Court issued and served its Order of Reassignment, reassigning this matter to the undersigned. (Doc. 7.)

1 On October 17, 2022, the reassignment order was returned by the postal service marked  
2 “Undeliverable, Refused, Unable to Forward.”<sup>1</sup>

3 **II. DISCUSSION**

4 *Applicable Legal Standards*

5 The Local Rules, corresponding with Federal Rule of Civil Procedure 11, provide,  
6 “[f]ailure of counsel or of a party to comply with these Rules or with any order of the Court may  
7 be grounds for the imposition by the Court of any and all sanctions authorized by statute or Rule  
8 or within the inherent power of the Court.” Local Rule 110. “District courts have inherent power  
9 to control their dockets” and, in exercising that power, may impose sanctions, including dismissal  
10 of an action. *Thompson v. Housing Auth., City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).  
11 A court may dismiss an action based on a party’s failure to prosecute an action, obey a court  
12 order, or comply with local rules. *See, e.g., Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir.  
13 1992) (dismissal for failure to comply with a court order to amend a complaint); *Malone v. U.S.*  
14 *Postal Service*, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to comply with a court  
15 order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to  
16 prosecute and to comply with local rules).

17 Local Rule 182(f) provides that a “pro se party is under a continuing duty to notify the  
18 Clerk and all other parties of any change of address .... Absent such notice, service of documents  
19 at the prior address of the ... pro se party shall be fully effective.” Further, Local Rule 183(b)  
20 states that a “party appearing in propria persona shall keep the Court and opposing parties advised  
21 as to his or her current address. If mail directed to a plaintiff in propria persona by the Clerk is  
22 returned by the U.S. Postal Service, and if such plaintiff fails to notify the Court and opposing  
23 parties within sixty-three (63) days thereafter of a current address, the Court may dismiss the  
24 action without prejudice for failure to prosecute.” (Emphasis omitted.)

25 “In determining whether to dismiss an action for lack of prosecution, the district court is  
26 required to weigh several factors: (1) the public’s interest in expeditious resolution of litigation;

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28 <sup>1</sup> The undersigned regrets the significant delay in issuing these Findings and Recommendations which unfortunately  
is the result of the extraordinary judicial resource emergency and understaffing experienced in the Eastern District of  
California.

1 (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public  
2 policy favoring disposition of cases on their merits; and (5) the availability of less drastic  
3 sanctions.” *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988) (internal quotation marks &  
4 citation omitted). These factors guide a court in deciding what to do and are not conditions that  
5 must be met in order for a court to take action. *In re Phenylpropanolamine (PPA) Products*  
6 *Liability Litigation*, 460 F.3d 1217, 1226 (9th Cir. 2006) (citation omitted).

7 ***Analysis***

8 Here, Plaintiff has failed to file a notice of change of address or to otherwise advise the  
9 Court of his current address. According to the Court’s docket, Plaintiff’s address of record is the  
10 “Coalinga State Hospital, 24511 West Jayne Ave., Apt #26, Coalinga, CA 93210.” All orders  
11 issued by the Court has been served at that address. The address appears to have become invalid  
12 approximately seven months after Plaintiff initiated the action. Alternatively, because mail was  
13 returned to the Court marked, in part, “Refused,” Plaintiff has apparently elected not to prosecute  
14 this action. Because Plaintiff has failed keep the Court apprised of his current address, and/or is  
15 refusing mail sent by the Court, this action is subject to dismissal. Given the Court’s inability to  
16 communicate with Plaintiff, there are no other reasonable alternatives available to address  
17 Plaintiff’s failure to obey the Local Rules and failure to prosecute. Thus, the first and second  
18 factors — the expeditious resolution of litigation and the Court’s need to manage its docket —  
19 weigh in favor of dismissal. *Carey*, 856 F.2d at 1440.

20 The third factor, risk of prejudice to defendant, also weighs fairly in favor of dismissal  
21 since a presumption of injury arises from the occurrence of unreasonable delay in prosecuting an  
22 action. *See Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). Here, while no defendant has  
23 appeared in this action, the case has been pending for more than three years. Without a current  
24 address for Plaintiff, unreasonable delays are inevitable. Thus, the third factor also weighs in  
25 favor of dismissal. *Carey*, 856 F.2d at 1440-41.

26 The fourth factor usually weighs against dismissal because public policy favors  
27 disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002). However,  
28 “this factor lends little support to a party whose responsibility it is to move a case toward

1 disposition on the merits but whose conduct impedes progress in that direction.” *In re PPA*, 460  
2 F.3d at 1228. Plaintiff has not moved this case forward toward disposition on the merits. It is his  
3 responsibility to do so. Instead, Plaintiff has stopped communicating with the Court altogether  
4 and has failed to comply with this Court’s Local Rules. Therefore, the fourth factor — the public  
5 policy favoring disposition of cases on their merits — also weighs in favor of dismissal. *Carey*,  
6 856 F.2d at 1440.

7 Finally, the Court’s warning to a party that failure to obey the court’s orders will result in  
8 dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262.  
9 Here, in the First Informational Order in Prisoner/Civil Detainee Civil Rights Case issued May  
10 18, 2021, Plaintiff was advised as follows: “In litigating this action, the parties must comply with  
11 this Order, the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”), and the Local Rules of the  
12 United States District Court, Eastern District of California (“Local Rules”), as modified by this  
13 Order. **Failure to so comply will be grounds for imposition of sanctions which may include**  
14 **dismissal of the case.** Local Rule 110; Fed. R. Civ. P. 41(b).” (*See* Doc. 3 at 1, emphasis added.)  
15 That Order further advised: “A pro se plaintiff must keep the Court and opposing parties informed  
16 of the party’s correct current address. Local Rule 182(f). If a party moves to a different address  
17 without filing and serving a notice of change of address, documents served at a party’s old  
18 address of record shall be deemed received even if not actually received. ... If mail directed to a  
19 pro se plaintiff at the address of record is returned by the United States Postal Service as  
20 undeliverable, the order will not be re-served a second time absence a notice of change of  
21 address. **If a pro se plaintiff’s address is not updated within sixty-three days of mail being**  
22 **returned as undeliverable, the case will be dismissed for failure to prosecute.**” (*Id.* at 5,  
23 emphasis added.) Thus, the undersigned finds Plaintiff had adequate warning that dismissal could  
24 result from his noncompliance with this Court’s Local Rules and/or failure to update his address.  
25 Thus, the fifth factor — the availability of less drastic sanctions —weighs in favor of dismissal.  
26 *Ferdik*, 963 F.2d at 1262; *Carey*, 856 F.2d at 1440.

27 In sum, Plaintiff has failed to comply with this Court’s Local Rules, and in doing so, has  
28 failed to prosecute this action. Whether Plaintiff has done so intentionally or mistakenly is

1 inconsequential. It is Plaintiff's responsibility to keep the Court apprised of his current address, to  
2 comply with the Local Rules and to prosecute this action. The Court declines to expend its limited  
3 resources on a case that Plaintiff has chosen to ignore.

4 **III. ORDER AND RECOMMENDATIONS**

5 Accordingly, the Court **DIRECTS** the Clerk of the Court to assign a district judge to this  
6 action.

7 Further, for the reasons given above, the Court **RECOMMENDS** that this action be  
8 dismissed, without prejudice, based on Plaintiff's failure to obey the Local Rules and to prosecute  
9 this action.

10 These Findings and Recommendations will be submitted to the district judge assigned to  
11 this case, pursuant to 28 U.S.C. § 636(b)(1). **Within 14 days** of the date of service of these  
12 Findings and Recommendations, a party may file written objections with the Court. The  
13 document should be captioned, "Objections to Magistrate Judge's Findings and  
14 Recommendations." Failure to file objections within the specified time may result in waiver of  
15 rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*  
16 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

17 IT IS SO ORDERED.

18 Dated: September 26, 2024

19   
UNITED STATES MAGISTRATE JUDGE