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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CORY LEE BRADEN,

Plaintiff,

v.

FRESNO COUNTY SHERIFF’S DEPT., et
al.,

Defendants.

Case No. 1:23-cv-01155-SAB

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSING THIS
ACTION WITH PREJUDICE FOR FAILURE
TO COMPLY WITH COURT ORDER AND
FAILURE TO PROSECUTE AND
DIRECTING CLERK OF COURT TO
RANDOMLY ASSIGN DISTRICT JUDGE

OBJECTIONS DUE WITHIN FOURTEEN
DAYS

I.

BACKGROUND

Cory Lee Braden (“Plaintiff”), a former pretrial detainee, proceeding pro se and *in forma pauperis*, filed this action pursuant to 42 U.S.C. § 1983 on August 3, 2023. (ECF No. 1.) On August 23, 2023, a screening order issued finding Plaintiff had failed to state any cognizable claims and granting Plaintiff leave to file a first amended complaint within thirty days. (ECF No. 7.) On August 30, 2023, Plaintiff filed a first amended complaint. (ECF No. 8.)

On March 1, 2024, a second screening order issued finding Plaintiff failed to state a cognizable claim and granting him one final opportunity to amend his complaint. (ECF No. 9.) Plaintiff was ordered to file his amended complaint within thirty days. (*Id.*) On March 15, 2024,

1 the second screening order was returned as undeliverable by the United States Postal Service
2 stating that Plaintiff was not in custody.¹

3 **II.**

4 **LEGAL STANDARD**

5 Local Rule 110 provides that “[f]ailure of counsel or of a party to comply with these
6 Rules or with any order of the Court may be grounds for imposition by the Court of any and all
7 sanctions . . . within the inherent power of the Court.” The Court has the inherent power to
8 control its docket and may, in the exercise of that power, impose sanctions where appropriate,
9 including dismissal of the action. Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir.
10 2000).

11 **III.**

12 **DISCUSSION**

13 **A. Plaintiff’s Failure to Comply with Court Orders and the Local Rules**

14 In this instance, the Court finds that dismissal of this action is warranted on two separate
15 grounds. First, Plaintiff was ordered to file an amended complaint within thirty days of the May
16 1, 2024 order. More than thirty days have passed, and Plaintiff has not filed an amended
17 complaint or otherwise responded to the Court’s order. Although Plaintiff’s mail has been
18 returned as undeliverable, Rule 182(f) provides that

19 Each appearing attorney and pro se party is under a continuing duty to notify the
20 Clerk and all other parties of any change of address or telephone number of the
21 attorney or the pro se party. Absent such notice, service of documents at the prior
22 address of the attorney or pro se party shall be fully effective.

23 Therefore, service of the order on the current address of record is fully effective and Plaintiff’s
24 failure to comply with the order is grounds for dismissal of this action.

25 Second, pursuant to Local Rule 183(b), a party appearing in propria persona is required to
26 keep the Court apprised of his or her current address at all times. Local Rule 183(b) provides, in
27 pertinent part:

28 ¹ The Court has checked the California Department of Corrections and Rehabilitation inmate locator and there is no
inmate with Plaintiff’s name currently in custody. https://www.cdcr.ca.gov/Visitors/Inmate_Locator.html (last visited
June 4, 2024).

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

6 In the instant case, more than sixty-three days have passed since Plaintiff's mail was first
7 returned, and he has not notified the Court of a current address. The Court is unable to contact
8 Plaintiff and there are no other reasonable alternatives available to address Plaintiff's failure to
9 comply with the Local Rule. Therefore, this action should be dismissed for failure to prosecute.

10 **B. The Factors Weigh in Favor of Dismissal**

11 A court may dismiss an action, with prejudice, based on a party's failure to prosecute an
12 action, failure to obey a court order, or failure to comply with local rules. See, e.g. Ghazali v.
13 Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik
14 v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an
15 order to file an amended complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988)
16 (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised
17 of address); Malone v. United States Postal Serv., 833 F.2d 128, 130 (9th Cir. 1987) (dismissal
18 for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir.
19 1986) (dismissal for lack of prosecution and failure to comply with local rules).

20 "In determining whether to dismiss an action for lack of prosecution, the district court is
21 required to consider several factors: '(1) the public's interest in expeditious resolution of
22 litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants;
23 (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less
24 drastic sanctions.' " Carey, 856 F.2d at 1440 (quoting Henderson v. Duncan, 779 F.2d 1421,
25 1423 (9th Cir. 1986)). These factors guide a court in deciding what to do and are not conditions
26 that must be met in order for a court to take action. In re Phenylpropanolamine (PPA) Products
27 Liability Litigation, 460 F.3d 1217, 1226 (9th Cir. 2006) (citation omitted).

28 In this instance, the public's interest in expeditious resolution of the litigation and the
Court's need to manage its docket weigh in favor of dismissal. In re Phenylpropanolamine

1 (PPA) Products Liability Litigation, 460 F.3d at 1226. Plaintiff was ordered to file an amended
2 complaint within thirty days of May 1, 2024. Plaintiff has neither filed an amended complaint
3 nor otherwise responded to the Court's order.

4 Further, pursuant to the Local Rules, Plaintiff was required to keep the Court updated
5 with his most recent address. It has been more than sixty-three days since Plaintiff's mail was
6 returned as undeliverable and he has not provided the Clerk with an updated address. Therefore,
7 there is no current address at which to contact Plaintiff. Plaintiff's failure to comply with the
8 orders of the Court and the Local Rules hinders the Court's ability to move this action towards
9 disposition and indicates that Plaintiff does not intend to diligently litigate this action.

10 Since it appears that Plaintiff does not intend to litigate this action diligently there arises a
11 rebuttable presumption of prejudice to the defendants in this action. In re Eisen, 31 F.3d 1447,
12 1452-53 (9th Cir. 1994). This risk of prejudice may be rebutted if Plaintiff offers an excuse for
13 the delay. In re Eisen, 31 F.3d at 1453. Although this action was filed in August 3, 2023,
14 Plaintiff has failed to state a claim in this action, no defendant has been served and therefore they
15 are not aware of this action. Here, the delay is solely attributable to Plaintiff's failure to comply
16 with the Local Rule requiring that he keep the Court updated with his current address and the
17 failure to file a timely amended complaint. The risk of prejudice to the defendants also weighs in
18 favor of dismissal.

19 The public policy in favor of deciding cases on their merits is greatly outweighed by the
20 factors in favor of dismissal. It is Plaintiff's responsibility to move this action forward. This
21 action can proceed no further without Plaintiff's cooperation and compliance with the order at
22 issue and the Local Rules. This action cannot simply remain idle on the Court's docket,
23 unprosecuted. In this instance, the fourth factor does not outweigh Plaintiff's failure to comply
24 with the Court's orders.

25 Finally, a court's warning to a party that their failure to obey the court's order will result
26 in dismissal satisfies the "consideration of alternatives" requirement. Ferdik, 963 F.2d at 1262;
27 Malone, 833 F.2d at 132-33; Henderson, 779 F.2d at 1424. The Court's August 23, 2023, and
28 May 1, 2024 screening orders requiring Plaintiff to file an amended complaint both expressly

1 advised Plaintiff that the action would be dismissed if he failed to comply with the Court’s order.
2 (ECF No. 7 at 8-9; ECF No. 9 at 6.) The May 1, 2024 order stated: “If Plaintiff fails to file an
3 amended complaint in compliance with this order, the Court will recommend to a district judge
4 that this action be dismissed consistent with the reasons stated in this order.” (ECF No. 9 at
5 6:18-20.) Thus, Plaintiff had adequate warning that dismissal would result from his
6 noncompliance with the Court’s order.

7 IV.

8 CONCLUSION AND RECOMMENDATION

9 In this instance, Local Rule 183(b) provides for the dismissal of an action based on
10 returned mail. Given the Court’s inability to communicate with Plaintiff, dismissal is warranted
11 and there are no other reasonable alternatives available. See Carey, 856 F.2d at 1441.

12 Further, Plaintiff has failed to comply with the Court’s order to file an amended
13 complaint. Local Rule 110 provides for sanctions for the failure to comply.

14 In considering the factors to determine if this action should be dismissed, Plaintiff’s
15 failure to comply indicates that he does not intend to diligently litigate this action. The factors
16 weigh in favor of dismissing this action for failure to prosecute and failure to comply with a
17 court order.

18 Accordingly, IT IS HEREBY RECOMMENDED that this action be DISMISSED for
19 Plaintiff’s failure to comply with orders of the court and failure to prosecute.

20 The Clerk of the Court is HEREBY DIRECTED to randomly assign this matter to a
21 District Judge for the purpose of issuing findings and recommendations.

22 This findings and recommendations is submitted to the district judge assigned to this
23 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court’s Local Rule 304. Within **fourteen**
24 **(14) days** of service of this recommendation, the parties may file written objections to this
25 findings and recommendations with the Court and serve a copy on all parties. Such a document
26 should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The
27 district judge will review the magistrate judge’s findings and recommendations pursuant to 28
28 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified

1 time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th
2 Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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4 IT IS SO ORDERED.

5 Dated: June 5, 2024


UNITED STATES MAGISTRATE JUDGE

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