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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAMES EVANS, JR.,
Plaintiff,
v.
TERRAZAS; et al.,
Defendants.

No. 2:09-cv-00292-TLN-AC

**ORDER VACATING TRIAL DATE AND
DISMISSING CASE**

This matter is a claim for damages brought pursuant to 42 U.S.C. § 1983 by Plaintiff James Evans, Jr. (“Plaintiff”) against Defendants Sergeant R. Terrazas and Captain J. Nuehring (“Defendants”). (See generally ECF No. 242.) The matter is set for trial beginning on August 26, 2019. (ECF No. 275.) For the reasons set forth below, the trial date is vacated and the case is dismissed without prejudice.

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1 **I. FACTUAL AND PROCEDURAL BACKGROUND**

2 Plaintiff filed his Complaint in February 2009. (ECF No. 1.) Trial was set to commence
3 on April 8, 2019. (ECF No. 272.) In February 2019, the Court issued a minute order resetting the
4 trial date for August 26, 2019. (ECF No. 275.) The Clerk of the Court attempted to serve this
5 minute order on Plaintiff, but it was returned as undeliverable on March 13, 2019, because
6 Plaintiff was no longer in custody at Salinas Valley State Prison. (ECF No. 276.)

7 As a result, on July 8, 2019, the Court gave Plaintiff until August 2 to file (i) an updated
8 address with the Court, and (ii) a status update regarding Plaintiff’s readiness to proceed to trial.
9 (ECF No. 276.) This minute order also warned Plaintiff that failure to respond would subject his
10 case to dismissal for failure to prosecute. (ECF No. 276.) This July 8 minute order was also
11 returned as undeliverable.

12 **II. STANDARD OF LAW**

13 “District courts have inherent power to control their dockets. In the exercise of that power
14 they may impose sanctions including, where appropriate, default or dismissal.” *Thompson v.*
15 *Hous. Auth. of L.A.*, 782 F.2d 829, 831 (9th Cir. 1986) (per curiam) (citing *Link v. Wabash R.R.*
16 *Co.*, 370 U.S. 626 (1961)); see also Fed. R. Civ. P. 41(b) (“If the plaintiff fails to prosecute or to
17 comply with these rules or a court order, a defendant may move to dismiss the action or any claim
18 against it.”). Pursuant to the Local Rules of the United States District Court for the Eastern
19 District of California, if mail directed to a plaintiff proceeding in propria persona is returned and
20 said plaintiff fails to notify the Court of his or her new address within sixty-three days thereafter,
21 “the Court may dismiss the action without prejudice for failure to prosecute.” L.R. 183(b).

22 “Courts are to weigh five factors in deciding whether to dismiss a case for failure to
23 comply with a court order: ‘(1) the public’s interest in expeditious resolution of litigation; (2) the
24 court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
25 favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.’” In
26 *re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006)
27 [hereinafter *In re PPA*] (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

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1 **III. ANALYSIS**

2 A. Expeditious Resolution of Litigation

3 “Orderly and expeditious resolution of disputes is of great importance to the rule of law.
4 By the same token, delay in reaching the merits, whether by way of settlement or adjudication, is
5 costly in money, memory, manageability, and confidence in the process.” Id. at 1227. A district
6 court’s judgment about when delay becomes unreasonable is entitled to deference “because it is
7 in the best position to determine what period of delay can be endured before its docket becomes
8 unmanageable.” Id. (quoting *Moneymaker v. CoBen (In re Eisen)*, 31 F.3d 1447, 1451 (9th Cir.
9 1994)).

10 This case has been pending for more than a decade and must come to a conclusion — one
11 way or another — soon. (See ECF No. 1.) Furthermore, the United States District Court for the
12 Eastern District of California maintains one of the heaviest civil caseloads in the entire country.
13 See *Cent. Valley Med. Grp., Inc. v. Indep. Physician Assocs. Med. Grp., Inc.*, No. 1:19-cv-00404-
14 LJO-SKO, 2019 WL 3337891, at *5 (E.D. Cal. July 25, 2019) (characterizing the Eastern District
15 of California as “overburdened”). This means that allowing a case like this to linger inactive on
16 the docket — particularly just as it was set to proceed to trial — runs the risk of prejudicing other
17 civil litigants that are also entitled to the Court’s attention and resources.

18 Accordingly, the Court finds that the public’s interest in expeditious resolution of civil
19 litigation weighs in favor of dismissal here.

20 B. Court’s Need to Manage Its Docket

21 For the same reasons set forth above, the Court finds that its need to manage its docket
22 weighs in favor of dismissal. See *Thompson*, 782 F.2d at 831. The Court simply has too many
23 other cases and controversies before it to wait passively for Plaintiff to resume litigating his case.

24 C. Risk of Prejudice to Defendants

25 There is a clear risk of prejudice to Defendants if any further delay occurs in this matter.
26 This is because the law “presumes prejudice from unreasonable delay.” *In re PPA*, 460 F.3d at
27 1227. While this presumption may be rebutted, *id.*, Plaintiff makes no effort to do so here
28 because he has effectively disappeared (see ECF No. 276), and because he has not filed anything

1 on the docket for over a year (see ECF No. 264 (containing Plaintiff’s last filing on the docket,
2 entered on July 25, 2018)).

3 Accordingly, the Court finds that the risk of prejudice to Defendants from further delay
4 weighs in favor of dismissal here.

5 D. Public Policy Favoring Dismissal on the Merits

6 The public policy favoring dismissal of cases on the merits weighs against dismissal here,
7 as it would in almost any case in which a court considers whether to dismiss an action for failure
8 to prosecute. At the same time, the rule in the Ninth Circuit is clear that “a case that is stalled or
9 unreasonably delayed by a party’s failure to comply with deadlines . . . cannot move forward
10 toward resolution on the merits.” *In re PPA*, 460 F.3d at 1228. For this reason, the Ninth Circuit
11 acknowledges that the policy favoring dismissal on the merits “‘lends little support’ to a party
12 whose responsibility it is to move a case toward disposition on the merits but whose conduct
13 impedes progress in that direction.” *Id.* (quoting *Allen v. Exxon Corp. (In re the EXXON*
14 *VALDEZ)*, 102 F.3d 429, 433 (9th Cir. 1996)).

15 This is just such a case envisioned by the Ninth Circuit’s rule; the public policy favoring
16 adjudication on the merits weighs only nominally against dismissal here because it is Plaintiff’s
17 own conduct — his failure to prosecute — that is impeding progress toward trial. (See ECF No.
18 264 (containing Plaintiff’s last filing on the docket, entered on July 25, 2018).)

19 E. Availability of Less Drastic Sanctions

20 Before dismissing a case, a district court must consider alternatives to dismissal and the
21 adequacy of less drastic sanctions. *In re PPA*, 460 F.3d at 1228–29. Examples of less drastic
22 sanctions to be considered include a warning, a formal reprimand, putting the case at the bottom
23 of the calendar, imposing costs or attorney fees, or precluding claims or defenses. *Id.* at 1228 n.5.

24 The Court has considered the viability of these alternatives and finds that none of them are
25 feasible in this case. For one thing, the Court has already attempted to warn Plaintiff that this
26 case will be dismissed if he continues to neglect it. (ECF No. 276.) For another thing, it is
27 unlikely that a formal reprimand, moving the case to the bottom of the calendar, or any other
28 sanction will do anything other than further delay conclusion of the matter, because none of these

1 alternatives are likely to change the fact that Plaintiff has been entirely disengaged from this
2 litigation for more than a year. (See ECF No. 264 (containing Plaintiff's last filing on the docket,
3 entered on July 25, 2018).)

4 Accordingly, the Court finds that the availability of less drastic sanctions does not weigh
5 heavily against dismissing this case.

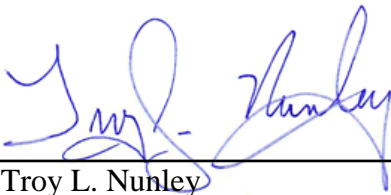
6 **IV. CONCLUSION**

7 After considering the factors that bear on whether this matter should be dismissed, the
8 Court finds that the weight of the equities is in favor of dismissal without prejudice for failure to
9 prosecute. Furthermore, far more than sixty-three days have passed since mail directed to
10 Plaintiff was returned as undeliverable, and Plaintiff has yet to notify the Court of his new
11 address. See L.R. 183(b).

12 Accordingly, for the reasons set forth above, the trial date is hereby VACATED and the
13 case is DISMISSED without prejudice. The Clerk of the Court is directed to close the case.

14 IT IS SO ORDERED.

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16 Dated: August 9, 2019

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20 Troy L. Nunley
21 United States District Judge