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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KARLIN WATTS,  
  
Plaintiff,  
  
v.  
  
DEPARTMENT OF CORRECTIONS, et  
al.,  
  
Defendants.

No. 2:17-cv-0852 JAM DB P

FINDINGS & RECOMMENDATIONS

Plaintiff is a former state prisoner proceeding pro se and in forma pauperis with a civil rights action under 42 U.S.C. § 1983. Plaintiff claims defendants violated his rights under the Eighth Amendment. Presently before the court is defendant’s motion to dismiss based on plaintiff’s failure to prosecute and failure to comply with the local rules. (ECF No. 45.)

**I. Background**

The court issued a discovery and scheduling order on May 8, 2019. (ECF No. 41.) Court records reflect that order was returned as undeliverable because the plaintiff was released from prison. (ECF No. 45-1 at 3.) On June 27, 2019, defendants filed a motion for summary judgment (ECF No. 43) and a motion for protective order (ECF No. 44). After plaintiff failed to respond to defendants’ motions, the court directed plaintiff to file an opposition or statement of non-opposition to defendants’ motion for protective order. (ECF No. 46.) That same day, defendants

1 filed a motion to dismiss. (ECF No. 45.) They argue this action should be dismissed because  
2 plaintiff failed to update his address and failed to appear at his duly noticed August 5, 2019  
3 deposition or confer with defense counsel regarding his appearance.

## 4 **II. Legal Standards – Dismissal**

5 “District courts have the inherent power to control their dockets and in the exercise of that  
6 power they may impose sanctions including, where appropriate, dismissal of a case.” Bautista v.  
7 L.A. Cty., 216 F.3d 837, 841 (9th Cir. 2000) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th  
8 Cir. 1992)). “If the plaintiff fails to prosecute or to comply with [the Federal Rules of Civil  
9 Procedure] or a court order, a defendant may move to dismiss the action or any claim against it.”  
10 Fed. R. Civ. P. 41(b);

11 In determining whether to dismiss a claim for failure to prosecute or failure to comply  
12 with a court order, the court must weigh the following factors: (1) the public’s interest in  
13 expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of  
14 prejudice to defendants; (4) the availability of less drastic alternatives; and (5) the public policy  
15 favoring disposition of cases on their merits. Ferdik, 963 F.2d at 1260-61. The factors provide  
16 guidance to the court in deciding what to do, and are not conditions that must be met in order for  
17 a court to take action. In re Pheylpropanolamine (PPA) Prods. Liab. Litig., 460 F.3d 1217, 1226  
18 (9th Cir. 2006).

## 19 **III. Discussion**

20 The expeditious resolution of this action and the court’s need to manage its docket weigh  
21 in favor of dismissal. Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999) (“The  
22 public’s interest in expeditious resolution of litigation always favors dismissal.”); In re PPA, 460  
23 F.3d at 1227 (quoting Ferdick, 963 F.2d at 1261) (“It is incumbent upon us to preserve the  
24 district courts’ power to manage their dockets’ without being subject to endless non-compliance  
25 with case management orders.”). While the “pendency of a lawsuit is not sufficiently prejudicial  
26 in and of itself to warrant dismissal.” Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002)  
27 (citing Yourish, 191 F.3d at 991). “[D]elay inherently increases the risk that witness’ memories  
28 will fade and evidence will become stale.” Pagtalunan, 291 F.3d at 643. Thus, the risk of

1 prejudice to defendants weighs in favor of dismissal. Additionally, because the court is unable to  
2 communicate with plaintiff, the court has no other reasonable alternative to address plaintiff's  
3 failure to inform the court of his address and his failure to respond to the court's order and  
4 prosecute this case. See In re PPA, 460 F.3d at 1228-29; Carey v. King, 856 F.2d 1439, 1441  
5 (9th Cir. 1988).

6 Public policy favors disposition of cases on the merits. Hernandez v. City of El Monte,  
7 138 F.3d 393, 399 (9th Cir. 1998). However, the other four factors weigh in favor of dismissal.  
8 Moreover, it appears that plaintiff has failed to comply with Local Rule 183(b), which requires  
9 that a party appearing in propria persona inform the court of any address change. Court orders  
10 issued in May and August were served on plaintiff's address of record and returned by the postal  
11 service. (ECF Nos. 41, 46.) Based on plaintiff's failure to update his address and his failure  
12 appear at or communicate with defendants about his deposition, the court can only conclude that  
13 plaintiff has lost interest in prosecuting this action. Accordingly, the court will recommend that  
14 this action be dismissed based on plaintiff's failure to prosecute and failure to comply with the  
15 local rules.

#### 16 **IV. Conclusion**

17 Accordingly, IT IS HEREBY RECOMMENDED that defendant's motion to dismiss  
18 (ECF No. 45) be granted based on plaintiff's failure to prosecute as well as his failure to comply  
19 with court orders and the local rules. See Fed. R. Civ. P. 41(b); Local Rules 110, 183(b).

20 These findings and recommendations are submitted to the United States District Judge  
21 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
22 after being served with these findings and recommendations, plaintiff may file written objections  
23 with the court. The document should be captioned "Objections to Magistrate Judge's Findings  
24 and Recommendations." Any response to the objections shall be filed and served within fourteen  
25 days after service of the objections. Plaintiff is advised that failure to file objections within the


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1 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951  
2 F.2d 1153 (9th Cir. 1991).

3 Dated: October 2, 2019

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6 DEBORAH BARNES  
7 UNITED STATES MAGISTRATE JUDGE  
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