

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KAY FIELDING,  
  
  Plaintiff,  
  
  v.  
  
AMTRAK,  
  
  Defendant.

No. 2:17-cv-01614 TLN AC (PS)

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff is proceeding in this action pro se. The action was accordingly referred to the undersigned for pretrial matters by E.D. Cal. R. (“Local Rule”) 302(c)(21). Defendant filed a motion to compel on March 5, 2018. ECF No. 19. Plaintiff did not timely respond. On March 16, 2018, the court received notice that the pre-trial scheduling order and another order served by the court were undeliverable. The clerk of court entered a docket notation that plaintiff must file a Notice of Change of Address by May 24, 2018. On March 30, 2018, noting that plaintiff had not responded to defendant’s motion to compel, the court sua sponte re-set the hearing on defendant’s motion to compel to give plaintiff a second opportunity to respond, and cautioned plaintiff that “[f]ailure to file an opposition or to appear at the hearing may be deemed as a statement of non-opposition and may result in a recommendation that this action be dismissed.” ECF No. 20 at 2. Plaintiff again failed to timely respond and did not appear at the hearing. ECF No. 21.

1 At the hearing on defendant's motion, the court noted plaintiff's pending deadline to  
2 update her address and ordered defendant to notify the court on May 25, 2018, the day after  
3 plaintiff's address update deadline, if it had received initial disclosures or had any further contact  
4 with the plaintiff regarding the status of discovery. On May 25, 2018, defendant filed the  
5 required document notifying the court that defendant had not received initial disclosures and has  
6 had no contact from plaintiff. ECF No. 23. Plaintiff has not updated her address with the court.

7 A plaintiff's failure to respond to a motion, comply with orders of the court, or inform the  
8 court of her current address of record are each cause for sanctions, up to and including dismissal  
9 of her case. See Local Rule 230(l) ("Failure of the responding party to file an opposition or to file  
10 a statement of no opposition may be deemed a waiver of any opposition to the granting of the  
11 motion[.]"); Local Rule 183(b) (authorizing dismissal without prejudice for failure to prosecute if  
12 a pro se party fails to keep the court and other parties informed of his or her current address);  
13 Local Rule 110 (a party's failure to comply with the Local Rules "may be grounds for imposition  
14 of any and all sanctions authorized by statute or Rule or within the inherent power of the Court");  
15 Fed. R. Civ. P. 41(b) (authorizing dismissal of an action due to plaintiff's failure to prosecute or  
16 to comply with the local or federal rules). Plaintiff's failure to update her address or prosecute  
17 this case in any way requires that this case be dismissed.

### 18 CONCLUSION


19 Therefore, IT IS HEREBY RECOMMENDED that this action be dismissed, without  
20 prejudice, for lack of prosecution and for failure to comply with the court's order. See Fed. R.  
21 Civ. P. 41(b); Local Rule 110. It is further ORDERED that defendant's motion to compel (ECF  
22 No. 19) is DENIED as MOOT.

23 These findings and recommendations are submitted to the United States District Judge  
24 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one (21)  
25 days after being served with these findings and recommendations, any party may file written  
26 objections with the court. Such document should be captioned "Objections to Magistrate Judge's  
27 Findings and Recommendations." Local Rule 304(d). Failure to file objections within the

28 ///

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: May 25, 2018

4   
5 ALLISON CLAIRE  
6 UNITED STATES MAGISTRATE JUDGE  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28