

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

OCT 23 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ERNEST J. ESPINOZA, an individual,

No. 19-16864

Plaintiff-Appellant,

D.C. No. 1:16-cv-00193-JLT
Eastern District of California,
Fresno

v.

MATT A. ASHE, an individual,

ORDER

Defendant-Appellee,

and

CALIFORNIA HIGHWAY PATROL,
a government entity; et al.,

Defendants.

Before: SILVERMAN, W. FLETCHER, and RAWLINSON, Circuit Judges.

A review of the record demonstrates that this court lacks jurisdiction over this appeal because the notice of appeal, served on September 16, 2019 and filed on September 23, 2019, was not filed or delivered to prison officials within 30 days after the district court's judgment entered on March 21, 2018. *See* 28 U.S.C. § 2107(a); *United States v. Sadler*, 480 F.3d 932, 937 (9th Cir. 2007) (requirement of timely notice of appeal is jurisdictional). We decline to construe appellant's statement in the notice of appeal that he first received notice of the judgment on March 22, 2019 as a motion to reopen the time to appeal because such a motion

would be untimely. *See* Fed. R. App. P. 4(a)(6)(A)(B) (motion to reopen time to appeal must be filed within 180 days after entry of judgment or within 14 days after receiving notice of entry of judgment, whichever is earlier). Consequently, this appeal is dismissed for lack of jurisdiction.

All pending motions are denied as moot.

DISMISSED.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

11 ERNEST J. ESPINOZA,) Case No.: 1:16-cv-00193 - JLT
12 Plaintiff,) ORDER DISMISSING THE ACTION WITHOUT
13 v.) PREJUDICE
14 CALIFORNIA HIGHWAY PATROL, et al.,)
15 Defendants.)

17 Ernest Espinoza initiated this action by filing on February 11, 2016. (Doc. 1) Because he has
18 failed to comply with the Local Rules and the Court is unable to communicate with Plaintiff, the
19 action is **DISMISSED** without prejudice.

20 **I. Relevant Procedural History**

21 In May 2017, the Court approved the request of counsel to withdraw from the action after which
22 the plaintiff proceeded *pro se* with the prosecution of this action. (Docs. 65, 66)

23 In December 2017, Nicole Roman, Defendants' counsel attempted to contact Plaintiff regarding
24 amending the Court's scheduling order. (Doc. 71 at 3, Roman Decl. ¶ 4) Ms. Roman reported she
25 "called the phone number listed for Mr. Espinoza on the court's docket on December 13, 2017," but
26 "[t]he number was out of service." (*Id.*) Ms. Roman then sent Plaintiff "a letter via facsimile and
27 overnight mail," but did not receive a response. (*Id.*) On December 28, 2017, the Court granted
28 Defendants' ex parte application for an order shortening time to modify the schedule. (Doc. 72)

1 On January 10, 2018, the Court's order was returned as "Undeliverable" by the United States
2 Postal Service, which noted the mail was "Not Deliverable as Addressed; Unable to Forward." To
3 date, Plaintiff's mailing address remains unknown, because he has not filed a "Notice of Change of
4 Address" with the Court.

5 **II. Requirements of the Local Rules**

6 Pursuant to Local Rule 183(b), a party appearing in propria persona is required to keep the
7 Court apprised of his current address: "If mail directed to a plaintiff in propria persona by the Clerk is
8 returned by the U.S. Postal Service, and if such plaintiff fails to notify the Court and opposing parties
9 within sixty-three (63) days thereafter of a current address, the Court may dismiss the action without
10 prejudice for failure to prosecute." LR 183(b). Because more than 63 days have passed since the
11 Court's order was returned as undeliverable, Plaintiff has failed to comply with the Local Rules.

12 **III. Discussion and Analysis**

13 "District courts have inherent power to control their dockets," and in exercising that power, a
14 court may impose sanctions including dismissal of an action. *Thompson v. Housing Authority of Los*
15 *Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action with prejudice, based on a
16 party's failure to prosecute an action or failure to obey a court order, or failure to comply with local
17 rules. *See, e.g., Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 2995) (dismissal for failure to comply
18 with local rules); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to
19 comply with an order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for
20 failure to prosecute and to comply with local rules).

21 In determining whether to dismiss an action for failure to prosecute, failure to comply with the
22 Local Rules, or failure to obey a court order, the Court must consider several factors, including: "(1)
23 the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket;
24 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their
25 merits; and (5) the availability of less drastic sanctions." *Henderson*, 779 F.2d at 1423-24; *see also*
26 *Ferdik*, 963 F.2d at 1260-61; *Thompson*, 782 F.2d at 831.

27 In the case at hand, the public's interest in expeditiously resolving this litigation and the Court's
28 interest in managing the docket weigh in favor of dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d

1 983, 990 (9th Cir. 1999) ("The public's interest in expeditious resolution of litigation always favors
2 dismissal"); *Ferdik*, 963 F.2d at 1261 (recognizing that district courts have inherent interest in
3 managing their dockets without being subject to noncompliant litigants). Judges in the Eastern District
4 of California carry one of the heaviest caseloads in the nation, and this Court cannot, and will not hold,
5 this action in abeyance while waiting for Plaintiff to notify the Court of a change in address.

6 The risk of prejudice to the defendant also weighs in favor of dismissal, since a presumption of
7 injury arises from the occurrence of unreasonable delay in prosecution of an action. *See Anderson v. Air*
8 *West*, 542 F.2d 522, 524 (9th Cir. 1976). Finally, the policy favoring disposition of cases on their merits
9 is outweighed by the factors in favor of dismissal.

10 **IV. Conclusion and Order**

11 Plaintiff has failed to follow the requirements of the Local Rules, which require him to provide
12 a current mailing address to the Court. As set forth above, the factors set forth by the Ninth Circuit
13 weigh in favor of dismissal of the matter.

14 Accordingly, the Court **ORDERS**:

15 1. This action is **DISMISSED** without prejudice; and
16 2. The Clerk of Court is **DIRECTED** to close this action.

17
18 IT IS SO ORDERED.

19 Dated: March 20, 2018

20 /s/ Jennifer L. Thurston
21 UNITED STATES MAGISTRATE JUDGE

22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JUDGMENT IN A CIVIL CASE

ERNEST J. ESPINOZA,

CASE NO: 1:16-CV-00193-JLT

v.

MATT A. ASHE, ET AL.,

XX — Decision by the Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE COURT'S ORDER FILED ON 3/21/2018

Marianne Matherly
Clerk of Court

ENTERED: March 21, 2018

by: /s/ C. Marrujo
Deputy Clerk

**Additional material
from this filing is
available in the
Clerk's Office.**