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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 LEE ANDREW REED,

12 Plaintiff,

13 v.

14 C. NELSON,

15 Defendant.
16

No. 2:20-CV-0512-DJC-DMC-P

ORDER

and

FINDINGS AND RECOMMENDATIONS

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
18 42 U.S.C. § 1983. Pending before the Court is Defendant's unopposed motion, ECF No. 35, to
19 dismiss this action as a sanction for failure to comply with the Court's June 16, 2023, order
20 directing Plaintiff to serve responses to discovery requests.

21 On June 16, 2023, the Court granted Defendant's unopposed motion to compel and
22 ordered Plaintiff to serve responses to discovery requests within 30 days. See ECF No. 34. In the
23 pending motion for terminating sanctions, Defendant states that, as of the date of filing of the
24 motion on August 1, 2023, Plaintiff had not complied. See ECF No. 35. Further, the Court's
25 review of the docket in this case reflects that mail directed to Plaintiff was returned undeliverable
26 on July 5, 2023, and, to date, Plaintiff has not filed a notice of change of address as required
27 under Eastern District of California Local Rule 183(b).

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1 The Court must weigh five factors before imposing the harsh sanction of dismissal.
2 See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v. U.S. Postal
3 Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's interest in
4 expeditious resolution of litigation; (2) the court's need to manage its own docket; (3) the risk of
5 prejudice to opposing parties; (4) the public policy favoring disposition of cases on their merits;
6 and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran, 46 F.3d 52,
7 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an appropriate
8 sanction is considered a less drastic alternative sufficient to satisfy the last factor. See Malone,
9 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is appropriate where
10 there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir.
11 1986). Dismissal has also been held to be an appropriate sanction for failure to inform the district
12 court and parties of a change of address pursuant to local rules. See Carey v. King, 856 F.2d
13 1439, 1440-41 (9th Cir. 1988) (per curiam).

14 Having considered these factors, and in light of Plaintiff's failure to comply with
15 the Court's June 16, 2023, order to serve responses to discovery as well as Plaintiff's failure to
16 submit a notice of change of address, the Court finds that dismissal of this action is appropriate.

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Based on the foregoing, the undersigned orders and recommends as follows:

1. It is RECOMMENDED that Defendant's unopposed motion to dismiss, ECF No. 35, be granted and that this action be dismissed, without prejudice, for lack of prosecution and failure to comply with court rules and orders.

2. It is ORDERED that Defendant's motion to vacate the dispositive motion filing deadliner pending the Court's final ruling on Defendant's motion to dismiss, ECF No. 36, is granted.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with these findings and recommendations, any party may file written objections with the court. Responses to objections shall be filed within 14 days after service of objections. Failure to file objections within the specified time may waive the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: October 11, 2023



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE