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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

MARIO DULANEY,

Case No. 1:14-cv-01051-DAD-BAM

Plaintiff,

FINDINGS AND RECOMMENDATIONS  
REGARDING DISMISSAL OF ACTION  
WITHOUT PREJUDICE FOR FAILURE TO  
PROSECUTE

v.

JERRY DYER, et al.,

Defendants.

FOURTEEN-DAY DEADLINE

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**I. Background**

Plaintiff Mario Dulaney, a state prisoner proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983 on July 3, 2014. (Doc. 1.)

On October 13, 2015, the Court issued an order dismissing Plaintiff's second amended complaint and granting Plaintiff leave to amend within thirty (30) days. (Doc. 21.) On October 27, 2015, the Court's order was returned by the United States Postal Service as undeliverable, unable to forward.

On December 4, 2015, due to the appointment of Judge Dale A. Drozd to the position of United States District Judge, this action was reassigned from District Judge Lawrence J. O'Neill to District Judge Dale A. Drozd for all further proceedings. (Doc. 22.) On December 30, 2015, the Court's reassignment order was returned by the United States Postal Service as Undeliverable (Inactive).

1           **II. Discussion**

2           Plaintiff is required to keep the Court apprised of his current address at all times. Local  
3 Rule 183(b) provides:

4           **Address Changes.** A party appearing in propria persona shall keep the Court and  
5 opposing parties advised as to his or her current address. If mail directed to a  
6 plaintiff in propria persona by the Clerk is returned by the U.S. Postal Service,  
7 and if such plaintiff fails to notify the Court and opposing parties within sixty-  
8 three (63) days thereafter of a current address, the Court may dismiss the action  
9 without prejudice for failure to prosecute.

10           Federal Rule of Civil Procedure 41(b) also provides for dismissal of an action for failure to  
11 prosecute.<sup>1</sup>

12           According to the Court’s docket, Plaintiff’s address change was due no later than January  
13 4, 2016. Plaintiff has failed to file a change of address and he has not otherwise been in contact  
14 with the Court. “In determining whether to dismiss an action for lack of prosecution, the district  
15 court is required to weigh several factors: (1) the public’s interest in expeditious resolution of  
16 litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4)  
17 the public policy favoring disposition of cases on their merits; and (5) the availability of less  
18 drastic sanctions.” *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988) (citation omitted); *accord*  
19 *Omstead v. Dell, Inc.*, 594 F.3d 1081, 1084 (9th Cir. 2010); *In re Phenylpropanolamine (PPA)*  
20 *Products Liability Litigation*, 460 F.3d 1217, 1226 (9th Cir. 2006). These factors guide a court in  
21 deciding what to do, and are not conditions that must be met in order for a court to take action. *In*  
22 *re PPA*, 460 F.3d at 1226 (citation omitted).

23           Given Plaintiff’s failure to respond to this Court’s orders and the delay in this action, the  
24 expeditious resolution of litigation and the Court’s need to manage its docket weigh in favor of  
25 dismissal. *Id.* at 1227. More importantly, given the Court’s apparent inability to communicate  
26 with Plaintiff, there are no other reasonable alternatives available to address Plaintiff’s failure to  
27 prosecute this action and his failure to apprise the Court of his current address. *In re PPA*, 460  
28 F.3d at 1228-29; *Carey*, 856 F.2d at 1441. The Court will therefore recommend that this action be

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<sup>1</sup> Courts may dismiss actions sua sponte under Rule 41(b) based on a plaintiff’s failure to prosecute. *Hells Canyon Preservation Council v. U. S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) (citation omitted).

1 dismissed based on Plaintiff's failure to prosecute this action.

2 **III. Conclusion and Recommendation**

3 For the reasons stated, it is HEREBY RECOMMENDED that this action be dismissed,  
4 without prejudice, based on Plaintiff's failure to prosecute. Fed. R. Civ. P. 41(b); Local Rule  
5 183(b).

6 These Findings and Recommendations will be submitted to the United States District  
7 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
8 **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may  
9 file written objections with the Court. The document should be captioned "Objections to  
10 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file  
11 objections within the specified time may result in the waiver of the "right to challenge the  
12 magistrate's factual findings" on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014)  
13 (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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15 IT IS SO ORDERED.

16 Dated: January 8, 2016

/s/ Barbara A. McAuliffe  
17 UNITED STATES MAGISTRATE JUDGE

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