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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

HECTOR ROMERO RODRIGUEZ,

CASE NO. 1:10-cv-00848-SMS PC

Plaintiff,

ORDER DISMISSING ACTION, WITHOUT
PREJUDICE, FOR FAILURE TO PROSECUTE

v.

UNITED STATES OF AMERICA, et al.,

Defendant.

_____/

Plaintiff Hector Romero Rodriguez “Plaintiff” is a former federal prisoner proceeding pro se and in forma pauperis in this civil action pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 91 S. Ct. 1999 (1971), which provides a remedy for violation of civil rights by federal actors. Plaintiff filed this action on April 19, 2010. On March 1, 2011, the Court issued an ordering directing service by the United States Marshal, and on March 14, 2011, the order was returned by the United States Postal Service as undeliverable stating “Out of Custody - Released.” On March 23, 2011, an order reassigning this case to the undersigned was issued and on April 13, 2011, it was returned by the Untied States Post Office as undeliverable stating “Not at this facility.”

Pursuant to Local Rule 183(b), a party appearing in propria persona is required to keep the Court apprised of his or her current address at all times. Local Rule 183(b) provides, in pertinent part:

If mail directed to a plaintiff in propria persona by the Clerk is returned by the U.S. Postal Service, and if such plaintiff fails to notify the Court and opposing parties within sixty-three (63) days thereafter

1 of a current address, the Court may dismiss the action without
2 prejudice for failure to prosecute.

3 In the instant case, more than sixty-three days have passed since Plaintiff's mail was returned, and
4 he has not notified the Court of a current address.

5 "In determining whether to dismiss an action for lack of prosecution, the district court is
6 required to consider several factors: '(1) the public's interest in expeditious resolution of litigation;
7 (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
8 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
9 sanctions.'" Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988) (quoting Henderson v. Duncan, 779
10 F.2d 1421, 1423 (9th Cir. 1986)). These factors guide a court in deciding what to do, and are not
11 conditions that must be met in order for a court to take action. In re Phenylpropanolamine (PPA)
12 Products Liability Litigation, 460 F.3d 1217, 1226 (9th Cir. 2006) (citation omitted).

13 In this instance, Local Rule 183(b) provides for the dismissal of an action based on returned
14 mail. Given the Court's inability to communicate with Plaintiff, dismissal is warranted and there
15 are no other reasonable alternatives available. See Carey, 856 F.2d at 1441.

16 Accordingly, this action is HEREBY DISMISSED, without prejudice, based on Plaintiff's
17 failure to prosecute.

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19 IT IS SO ORDERED.

20 **Dated:** May 26, 2011

21 /s/ Sandra M. Snyder
22 UNITED STATES MAGISTRATE JUDGE
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