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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DWAYNE MAYFIELD,

 Plaintiff,

 v.

M. MIX, et al.,

 Defendants.

1:10cv01091 AWI DLB PC

FINDINGS AND RECOMMENDATIONS
REGARDING DISMISSAL OF ACTION FOR
FAILURE TO PROSECUTE

FIFTEEN-DAY OBJECTION PERIOD

Plaintiff Dwayne Mayfield (“Plaintiff”) is proceeding pro se and in forma pauperis in this civil rights action filed on June 16, 2010. This action is proceeding on Plaintiff’s complaint for violation of the Eighth Amendment against Defendants E. Mason and M. Mix. Defendants’ December 27, 2013, motion for summary judgment is pending.

On February 14, 2014, the Court issued a notice to Plaintiff warning him that if he did not oppose the motion for summary judgment, the motion would be decided without the benefit of any arguments he may have.

On February 24, 2014, the United States Postal Service returned the order with the notation, “Undeliverable, Paroled.”

DISCUSSION

Plaintiff is required to keep the Court apprised of his current address at all times, and Local Rule 183(b) provides, “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

1 sixty-three (63) days thereafter of a current address, the Court may dismiss the action without
2 prejudice for failure to prosecute.” Federal Rule of Civil Procedure 41(b) also provides for dismissal
3 of an action for failure to prosecute.¹

4 Plaintiff’s address change was due on or before April 28, 2014, but he failed to file one and
5 he has not otherwise been in contact with the Court. “In determining whether to dismiss an action
6 for lack of prosecution, the district court is required to consider several factors: (1) the public’s
7 interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk
8 of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and
9 (5) the availability of less drastic sanctions.” *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988)
10 (internal quotation marks and citation omitted); *accord Omstead v. Dell, Inc.*, 594 F.3d 1081, 1084
11 (9th Cir. 2010); *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217,
12 1226 (9th Cir. 2006). These factors guide a court in deciding what to do, and are not conditions that
13 must be met in order for a court to take action. *In re PPA*, 460 F.3d at 1226 (citation omitted).

14 This case has been pending since 2010, and the expeditious resolution of litigation and the
15 Court’s need to manage its docket weigh in favor of dismissal. *Id.* at 1227. Further, the opposing
16 party is necessarily prejudiced when he is unaware of the plaintiff’s location during the discovery
17 phase of the litigation. *Id.*

18 With respect to the fourth factor, “public policy favoring disposition of cases on their merits
19 strongly counsels against dismissal,” but “this factor lends little support to a party whose
20 responsibility it is to move a case toward disposition on the merits but whose conduct impedes
21 progress in that direction.” *Id.* at 1228.

22 Finally, given the Court’s and Defendant’s inability to communicate with Plaintiff, there are
23 no other reasonable alternatives available to address Plaintiff’s failure to prosecute. *In re PPA*, 460
24 F.3d at 1228-29; *Carey*, 856 F.2d at 1441.

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28 ¹ Courts may dismiss actions sua sponte under Rule 41(b) based on the 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 **RECOMMENDATION**

2 Accordingly, the Court HEREBY RECOMMENDS DISMISSAL of this action, without
3 prejudice, based on Plaintiff’s failure to prosecute. Fed. R. Civ. P. 41(b); Local Rule 183(b).

4 These Findings and Recommendations will be submitted to the United States District Judge
5 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fifteen (15)**
6 **days** after being served with these Findings and Recommendations, the parties may file written
7 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s
8 Findings and Recommendations.” The parties are advised that failure to file objections within the
9 specified time may waive the right to appeal the District Court’s order. *Martinez v. Ylst*, 951 F.2d
10 1153 (9th Cir. 1991).

11 IT IS SO ORDERED.

12 Dated: May 9, 2014

13 /s/ Dennis L. Beck
14 UNITED STATES MAGISTRATE JUDGE