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5 **UNITED STATES DISTRICT COURT**

6 EASTERN DISTRICT OF CALIFORNIA  
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9 LEONARD JOHNSON, ) 1:11-cv-00191-LJO- BAM (PC)  
10 Plaintiff, )  
11 v. ) FINDINGS AND RECOMMENDATIONS  
12 MATTHEW CATES, et al., ) REGARDING DISMISSAL OF ACTION  
13 Defendants. ) FOR FAILURE TO PROSECUTE  
14 ) (ECF No. 24)  
 ) TWENTY-ONE DAY DEADLINE  
 )

15 Plaintiff Leonard Johnson (“Plaintiff”) is a state prisoner proceeding pro se in this civil  
16 rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on February 3, 2011.  
17 Following remand from the Ninth Circuit Court of Appeals, this Court issued an order directing  
18 Plaintiff to submit service documents and USM-285 forms. (ECF No. 24.) On September 9,  
19 2013, the order was returned as undeliverable, return to sender, paroled.

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

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

27 Local Rule 183(b).  
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1 In the instant case, more than sixty-three days have passed since Plaintiff's mail was  
2 returned by the U.S. Postal Service, and he has not notified the Court of a current address.

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

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

15 Accordingly, IT IS HEREBY RECOMMENDED that this action be DISMISSED,  
16 without prejudice, based on Plaintiff's failure to prosecute.

17 These Findings and Recommendations will be submitted to the United States District  
18 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
19 **twenty-one (21) days** after being served with these Findings and Recommendations, Plaintiff  
20 may file written objections with the court. The document should be captioned "Objections to  
21 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file  
22 objections within the specified time may waive the right to appeal the District Court's order.  
23 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

24 IT IS SO ORDERED.

25 Dated: February 3, 2014

26 /s/ Barbara A. McAuliffe  
27 UNITED STATES MAGISTRATE JUDGE  
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