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

|                  |   |                                      |
|------------------|---|--------------------------------------|
| RUMALDO BARBOZA, | ) | Case No.: 1:12-cv-01914-AWI-JLT (PC) |
|                  | ) |                                      |
| Plaintiff,       | ) | FINDINGS AND RECOMMENDATIONS         |
|                  | ) | DISMISSING THE CASE FOR FAILURE TO   |
| v.               | ) | PROSECUTE                            |
|                  | ) |                                      |
| BARRY J. GREEN,  | ) | (Doc. 15)                            |
|                  | ) |                                      |
| Defendant.       | ) | 15 DAY DEADLINE                      |
|                  | ) |                                      |

Plaintiff, Rumaldo Barboza (“Plaintiff”), is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983. On July 30, 2013, the Court dismissed the Complaint in this matter. (Doc. 15.) The Court granted Plaintiff 21 days from the date of service of the order to comply with the July 30, 2013 order. *Id.* Nonetheless, more than 21 days passed and Plaintiff failed to file a first amended complaint. On August 28, 2013, an order issued for Plaintiff to show cause why this action should not be dismissed for failure to comply with the Court’s order. (Doc. 16.) Plaintiff did not respond, so Findings and Recommendations that this action be dismissed for Plaintiff’s failure to prosecute issued, allowing Plaintiff to file objections thereto within fourteen days. (Doc. 17.) Though tardy, Plaintiff filed objections on October 18, 2013 which were allowed to satisfy the order to show cause and upon which an extension of time was granted for

1 Plaintiff to file a first amended complaint by November 26, 2013. (Doc. 20.)<sup>1</sup> Unfortunately,  
2 November 26th came and went without Plaintiff filing a first amended complaint and mail from both  
3 this Court and the Ninth Circuit to Plaintiff was returned as undeliverable with notation that Plaintiff  
4 no longer resided at Valley State Prison for Women. (See Docs. 21, 22 and docket entries noting  
5 return service on CM/ECF.)

6 Fed. R. Civ. P. 83 and Local Rule 182(f) impose a continuing duty on a party appearing pro se  
7 to notify the Clerk of the Court and any parties to this matter of any changes in address as they occur.  
8 After the Clerk mails an order or other document to the pro se party and the USPS returns the  
9 document as undeliverable, a plaintiff is given 63 days after the return date in which to notify the  
10 Court and the opposing parties of his or her new address. Local Rule 183(b). The Court may dismiss  
11 the matter without prejudice for failure to prosecute after the lapse of the 63-day period. *Id.* In the  
12 instant case, Plaintiff was required to notify the Court of his change of address on or before January  
13 13, 2013. Plaintiff has not notified the Court of his current address.

14 In determining whether to dismiss an action for lack of prosecution, the court must consider  
15 several factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to  
16 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition  
17 of cases on their merits; and (5) the availability of less drastic sanctions. *Henderson v. Duncan*, 779  
18 F.2d 1421, 1423 (9th Cir. 1986); *Carey v. King*, 856 F.2d 1439 (9th Cir. 1988). The public's interest  
19 in expeditiously resolving this litigation and the Court's interest in managing its docket weigh in favor  
20 of dismissal, as this case has been pending since November 26, 2012. (Doc. 1.) This case cannot be  
21 held in abeyance indefinitely based on Plaintiff's failure to notify the Court of his address.

22 The risk of prejudice to potential defendants also weighs in favor of dismissal, since a  
23 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.  
24 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). Similarly, the factors in favor of dismissal  
25 discussed above greatly outweigh the public policy favoring disposition of cases on their merits.  
26 Finally, no lesser sanction is feasible given the Court's inability to communicate with Plaintiff based

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28 <sup>1</sup> Just prior to this order issuing, Plaintiff filed a notice of appeal to the Ninth Circuit of an order denying a motion for preliminary injunction. (See Docs. 3, 10, 18, 21.)

1 on Plaintiff's failure to keep the Court apprised of his current address. Therefore, it is recommended  
2 that this matter be **DISMISSED without prejudice** for failure to prosecute.

3 **CONCLUSION**

4 Accordingly, the Magistrate Judge hereby **RECOMMENDS** as follows that:

- 5 1. this action be **DISMISSED without prejudice** for Plaintiff's failure to  
6 prosecute; and  
7 2. these findings and recommendations are submitted to the United States  
8 District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C.  
9 § 636(b)(1).

10 Within fifteen days after being served with these findings and recommendations, Plaintiff may  
11 file written objections with the Court. Such a document should be captioned "Objections to  
12 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections  
13 within the specified time may waive the right to appeal the District Court's order. *Martinez v. Ylst*,  
14 951 F.2d 1153 (9th Cir. 1991).

15  
16 IT IS SO ORDERED.

17 Dated: January 16, 2014

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE