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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRIAN DUNCAN LEWIS,
Plaintiff,
v.
B. KIBLER, et al.,
Defendants.

Case No. 1:13-cv-00155-LJO-BAM (PC)
FINDINGS AND RECOMMENDATIONS
REGARDING DISMISSAL OF ACTION
WITHOUT PREJUDICE FOR FAILURE TO
PROSECUTE

Plaintiff Brian Duncan Lewis, a former state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on January 31, 2013.

On March 6, 2014, the Court dismissed Plaintiff's first amended complaint with leave to amend within thirty days. The order was returned by the United States Postal Service as undeliverable on March 31, 2014.

Plaintiff is required to keep the Court apprised of his current address at all times. 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 sixty-three (63) days thereafter of a current address, the Court may dismiss the action without prejudice for failure to prosecute.

Federal Rule of Civil Procedure 41(b) also provides for dismissal of an action for failure to

1 prosecute.¹

2 Plaintiff's address change was due no later than June 5, 2014, but he has failed to file one
3 and he has not otherwise been in contact with the Court.² "In determining whether to dismiss an
4 action for lack of prosecution, the district court is required to weigh several factors: (1) the
5 public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket;
6 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on
7 their merits; and (5) the availability of less drastic sanctions." *Carey v. King*, 856 F.2d 1439, 1440
8 (9th Cir. 1988) (internal quotation marks and citation omitted); *accord Omstead v. Dell, Inc.*, 594
9 F.3d 1081, 1084 (9th Cir. 2010); *In re Phenylpropanolamine (PPA) Products Liability Litigation*,
10 460 F.3d 1217, 1226 (9th Cir. 2006). These factors guide a court in deciding what to do, and are
11 not conditions that must be met in order for a court to take action. *In re PPA*, 460 F.3d at 1226
12 (citation omitted).

13 This case has been pending since 2013, and the expeditious resolution of litigation and the
14 Court's need to manage its docket weigh in favor of dismissal. *Id.* at 1227. More importantly,
15 given the Court's inability to communicate with Plaintiff, there are no other reasonable
16 alternatives available to address Plaintiff's failure to prosecute. *In re PPA*, 460 F.3d at 1228-29;
17 *Carey*, 856 F.2d at 1441.

18 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed, without
19 prejudice, based on Plaintiff's failure to prosecute. Fed. R. Civ. P. 41(b); Local Rule 183(b).

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22 These findings and recommendations will be submitted to the United States District Judge
23 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen (14)
24 days after being served with these findings and recommendations, Plaintiff may file written
25 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
26 Findings and Recommendations." Plaintiff is advised that failure to file objections within the

27 _____
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).

² The Court's docket reflects a due date of June 9, 2014.

1 specified time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d
2 1153 (9th Cir. 1991).

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4 IT IS SO ORDERED.

5 Dated: June 12, 2014

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

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