

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GEORGE EDWARD SUMMERS,
Plaintiff,
v.
R. CHAPNICK, et al.,
Defendants.

Case No. 1:13-cv-00190 LJO DLB PC
FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF
ACTION FOR FAILURE TO PROSECUTE
TEN-DAY OBJECTION DEADLINE

Plaintiff George Edward Summers, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on May 16, 2012.

On September 22, 2014, the District Court issued an order dismissing certain claims. The order was returned by the United States Postal Service as undeliverable on October 8, 2014.

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 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 prosecute.¹

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 Plaintiff's address change was due by December 15, 2014, but he failed to file one and he
2 has not otherwise been in contact with the Court. "In determining whether to dismiss an action for
3 lack of prosecution, the district court is required to consider several factors: (1) the public's
4 interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the
5 risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their
6 merits; and (5) the availability of less drastic sanctions." *Carey v. King*, 856 F.2d 1439, 1440 (9th
7 Cir. 1988) (internal quotation marks and citation omitted); *accord Omstead v. Dell, Inc.*, 594 F.3d
8 1081, 1084 (9th Cir. 2010); *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460
9 F.3d 1217, 1226 (9th Cir. 2006). These factors guide a court in deciding what to do, and are not
10 conditions that must be met in order for a court to take action. *In re PPA*, 460 F.3d at 1226
11 (citation omitted).

12 This case has been pending since 2012, and the expeditious resolution of litigation and the
13 Court's need to manage its docket weigh in favor of dismissal. *Id.* at 1227. Further, the opposing
14 party is necessarily prejudiced when he is unaware of the plaintiff's location during the discovery
15 phase of the litigation. *Id.*

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

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

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

25 These Findings and Recommendations will be submitted to the United States District
26 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **ten**
27 **(10) days** after being served with these Findings and Recommendations, the parties may file
28 written objections with the Court. The document should be captioned "Objections to Magistrate

1 Judge's Findings and Recommendations." The parties are advised that failure to file objections
2 within the specified time may waive the right to appeal the District Court's order. *Martinez v.*
3 *Ylst*, 951 F.2d 1153 (9th Cir. 1991).

4
5 IT IS SO ORDERED.

6 Dated: December 25, 2014

/s/ Dennis L. Beck
7 UNITED STATES MAGISTRATE JUDGE

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28