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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GARY DALE BARGER,
Plaintiff,
v.
JERRY BROWN, et al.,
Defendants.

Case No. 1:13-cv-00452 LJO DLB PC

FINDINGS AND RECOMMENDATIONS
REGARDING DISMISSAL OF ACTION FOR
FAILURE TO PROSECUTE

FOURTEEN DAY DEADLINE

Plaintiff Gary Dale Barger (“Plaintiff”) is a California state prisoner proceeding pro se and in forma pauperis in this civil action pursuant to 42 U.S.C. § 1983. Plaintiff filed his complaint on March 28, 2013.

On March 29, 2013, the Court mailed Plaintiff documents relating to his case. However, the mail was returned by the United States Postal Service with a notation, “Undeliverable, Name and Prison ID Number Do Not Match.”

On May 13, 2013, the Court again mailed Plaintiff documents related to his case. On June 6, 2013, the mail was returned by the United States Postal Service with a notation, “Undeliverable, Name and CDC# Do Not Match.”

“In determining whether to dismiss an action for lack of prosecution, the district court is required to consider several factors: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public

1 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
2 sanctions.” Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988) (quoting Henderson v. Duncan, 779
3 F.2d 1421, 1423 (9th Cir. 1986)). These factors guide a court in deciding what to do, and are not
4 conditions that must be met in order for a court to take action. In re Phenylpropanolamine (PPA)
5 Products Liability Litigation, 460 F.3d 1217, 1226 (9th Cir. 2006) (citation omitted).

6 In this instance, given the Court’s inability to communicate with Plaintiff, dismissal is
7 warranted and there are no other reasonable alternatives available. The action has been pending
8 since March 28, 2013, and all mail sent to Plaintiff has been returned. See Carey, 856 F.2d at 1441.

9 Accordingly, the Court RECOMMENDS that this action be DISMISSED WITHOUT
10 PREJUDICE for Plaintiff’s failure to prosecute. These Findings and Recommendations will be
11 submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title
12 28 U.S.C. § 636(b)(1). Within fourteen (14) days after being served with these Findings and
13 Recommendations, the parties may file written objections with the Court. The document should be
14 captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The parties are
15 advised that failure to file objections within the specified time may waive the right to appeal the
16 District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

17
18 IT IS SO ORDERED.

19 Dated: July 24, 2013

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE