## 1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 EASTERN DISTRICT OF CALIFORNIA 9 10 11 RICHARD JIMENEZ, Case No.: 1:13-cv-01204-SAB (PC) 12 ORDER DISMISSING ACTION FOR Plaintiff, FAILURE TO PROSECUTE AND DIRECTING CLERK OF COURT TO 13 v. **ENTER JUDGMENT** FRESNO COUNTY SUPERIOR COURT, 14 (ECF No. 22) et.al. 15 Defendant. 16 Plaintiff Richard Jimenez ("Plaintiff"), a pretrial detainee proceeding pro se and in forma 17 pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on August 2, 2013. Pursuant to 28 18 19 U.S.C. § 636(c), Plaintiff consented to the jurisdiction of the United States Magistrate Judge on 20 September 24, 2013. Local Rule 302. I. 21 **BACKGROUND** 22 23 On March 10, 2014, the Court issued an order directing the United States Marshal to serve the 24 complaint on Defendant Redfield. The Court's order was returned as undeliverable on March 26, 2014. On May 9, 2014, the Court issued a subsequent discovery and scheduling order, which was also 25 returned as undeliverable on May 19, 2014. 26 27 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

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 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. 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). Plaintiff's address change was due by May 28, 2014, but he failed to file one and he has not otherwise been in contact with the Court.

On June 9, 2014, the Court issued an order to show cause why the action should not be dismissed. The Court's order was returned as undeliverable on June 18, 2014, and Plaintiff failed to respond to the Court's order. Thus, dismissal of the action is warranted.

II.

## **DISCUSSION**

"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 policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions." Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988) (internal quotation marks and citation omitted); accord Omstead v. Dell, Inc., 594 F.3d 1081, 1084 (9th Cir. 2010); In re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1226 (9th Cir. 2006). These factors guide a court in deciding what to do, and are not conditions that must be met in order for a court to take action. In re PPA, 460 F.3d at 1226 (citation omitted).

This case has been pending since 2013, and the expeditious resolution of litigation and the Court's need to manage its docket weigh in favor of dismissal. <u>Id.</u> at 1227. Further, the opposing party is necessarily prejudiced when he is unaware of the plaintiff's location during the discovery phase of the litigation. <u>Id.</u>

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

direction." Id. at 1228. Finally, given the Court's and Defendant's inability to communicate with Plaintiff, there are no other reasonable alternatives available to address Plaintiff's failure to prosecute. In re PPA, 460 F.3d at 1228-29; Carey, 856 F.2d at 1441. III. **ORDER** Accordingly, IT IS HEREBY ORDERED that this action is DISMISSED, without prejudice, based on Plaintiff's failure to prosecute. Fed. R. Civ. P. 41(b); Local Rule 183(b). IT IS SO ORDERED. Dated: **July 11, 2014** UNITED STATES MAGISTRATE JUDGE