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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 MOSES FLORES,

12 Plaintiff,

13 v.

14 CHILI'S BAR AND GRILL and COLIN
15 BUTTERFIELD,

16 Defendants.

No. 1:13-cv-1783 DAD-EPG

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF CASE
FOR FAILURE TO PROSECUTE

OBJECTIONS DUE IN FOURTEEN (14)
DAYS

17 Plaintiff Moses Flores (“Plaintiff”), proceeding *pro se* and *in forma pauperis*, filed a Third
18 Amended Complaint (“TAC”) on February 3, 2016, alleging he was unlawfully terminated from his
19 employment at Chili’s Bar and Grill (“Chili’s”) based on his race. (ECF No. 34.) Plaintiff has named
20 Chili’s and Colin Butterfield¹ as Defendants (“Defendants”), and alleges several causes of action
21 under Title VII of the Civil Rights Act of 1964, 42 U.S. C. § 2000e *et seq* (“Title VII”), as well as
22 several violations under the Universal Declaration of Human Rights, G.A. Res. 217A, U.N. Doc.
23 A/810 (1948) (the “Declaration”). (Doc. 26).
24

25 Under Federal Rule of Civil Procedure 41(b), the Court may involuntarily dismiss a case where
26 “the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to

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¹ It is unclear whether Collin Butterfield is a named Defendant in the TAC because he is not
28 specifically listed in the caption. However, Defendant Butterfield was named in the first complaint,
and the body of the TAC contains numerous allegations against him. Therefore, the Court will address
claims brought against this Defendant.

1 dismiss the action or any claim against it.” FED. R. CIV. P. 41(b); *see also Hells Canyon Preservation*
2 *Council v. U. S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) (providing that that courts may
3 involuntary dismiss a case under Rule 41(b) *sua sponte* for a plaintiff's failure to prosecute or comply
4 with the rules of civil procedure or court's orders) (citations omitted). “In determining whether to
5 dismiss an action for lack of prosecution, the district court is required to weigh several factors: (1) the
6 public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3)
7 the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their
8 merits; and (5) the availability of less drastic sanctions.” *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir.
9 1988) (internal quotation marks and citation omitted); *accord Omstead v. Dell, Inc.*, 594 F.3d 1081,
10 1084 (9th Cir. 2010); *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1226 (9th
11 Cir. 2006). These factors are “not a series of conditions precedent before the judge can do anything,”
12 but a “way for a district judge to think about what to do.” *In re PPA*, 460 F.3d at 1226 (quoting *Valley*
13 *Eng'rs Inc. v. Elec. Eng'g Co.*, 158 F.3d 1051, 1057 (9th Cir. 1998)).

14 Plaintiff is required to keep the Court apprised of his current address at all times. *See* CAED-
15 LR 183. Local Rule 183(b) provides:

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17 **Address Changes.** A party appearing *in propria persona* shall keep the Court and
18 opposing parties advised as to his or her current address. If mail directed to a plaintiff
19 in propria persona by the Clerk is returned by the U.S. Postal Service, and if such
20 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.

21 *Id.*

22 On December 11, 2013, an order was issued by U.S. Magistrate Judge Gary S. Austin
23 informing as follows:

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25 8. A plaintiff proceeding in propria persona has an affirmative duty to keep the
26 Court and opposing parties informed of his or her current address. If a plaintiff moves
27 and fails to file a notice of change of address, service of Court orders at plaintiff's prior
28 address shall constitute effective notice. *See* Local Rule 182(f). If mail directed to
plaintiff is returned by the U.S. Postal Service as undeliverable, the Court will not
attempt to re-mail it. **If the address is not updated within 60 days of the mail being
returned, the action will be dismissed for failure to prosecute.** *See* Local Rule
183(b).

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(ECF No. 5, p. 3.) (emphasis as in original).

Despite this clear instruction, mail sent to Plaintiff has been returned as undeliverable on at least five occasions since this case was filed in 2013. Most recently, the Court issued a minute order granting in part a motion for an extension of time to file objections to the Court’s Findings and Recommendations. (ECF No. 40.) That order stated that:

Plaintiff is further advised that pursuant to Local Rule 183, he shall advise the Court of any changes in his address pursuant to Local Rule 182(f). Failure to do so may result in dismissal of this action pursuant to Local Rule 183(b).

Id. The Court attempted to serve this order upon Plaintiff by mail. However, the mail was returned as undeliverable on July 22, 2016. Plaintiff has not attempted to update his mailing address since that time.

Plaintiff’s failure to comply with this Court’s rules and orders, the expeditious resolution of litigation and the Court’s need to manage its docket weigh in favor of dismissal. *See In re PPA* at 1227. More importantly, given the Court’s apparent inability to communicate with Plaintiff, there are no other reasonable alternatives available to address Plaintiff’s failure to prosecute this action and his failure to apprise the Court of his current address. *See id.* at 1228-29; *Carey*, 856 F.2d at 1441.

RECOMMENDATION

For the reasons stated above, it is **HEREBY RECOMMENDED** that this action be dismissed, without prejudice, based on Plaintiff’s failure to prosecute.

These Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may file written objections with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.”

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Plaintiff is advised that failure to file objections within the specified time may result in the waiver of the “right to challenge the magistrate’s factual findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: January 9, 2017

/s/ Eric P. Groj
UNITED STATES MAGISTRATE JUDGE