

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

10 RICHARD MAQUINALES, Case No. 1:13-cv-01993-BAM (PC)

11 Plaintiff, ORDER DISMISSING ACTION WITHOUT
12 v. PREJUDICE FOR FAILURE TO
PROSECUTE

13 DAVID I. ROHRDANZ, et al.,

Defendants.

16 Plaintiff Richard Maquinales (“Plaintiff”), a state prisoner proceeding pro se and in forma
17 pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on November 25, 2013. The
18 matter was transferred to this Court on December 5, 2013. Plaintiff consented to the jurisdiction
19 of the United States Magistrate Judge. (ECF No. 8.)

20 On October 23, 2014, the Court dismissed Plaintiff's first amended complaint with leave to
21 amend within thirty days. (ECF No. 16.) The order was returned by the United States Postal
22 Service as Undeliverable, Refused on October 30, 2014.

23 Plaintiff is required to keep the Court apprised of his current address at all times. Local
24 Rule 183(b) provides in relevant part:

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.

²⁸ Federal Rule of Civil Procedure 41(b) also provides for dismissal of an action for failure to

1 prosecute.¹

2 More than sixty-three days have passed and Plaintiff has failed to file a notice of change of
3 address and has not otherwise been in contact with the Court. “In determining whether to dismiss
4 an 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 November 2013, and the expeditious resolution of
14 litigation and the Court’s need to manage its docket weigh in favor of dismissal. *Id.* at 1227.
15 More importantly, given the Court’s inability to communicate with Plaintiff, there are no other
16 reasonable alternatives available to address Plaintiff’s failure to prosecute this action. *In re PPA*,
17 460 F.3d at 1228-29; *Carey*, 856 F.2d at 1441.

18 Accordingly, this action is HEREBY DISMISSED, without prejudice, based on Plaintiff’s
19 failure to prosecute. Fed. R. Civ. P. 41(b); Local Rule 183(b). This terminates the action in its
20 entirety.

21 IT IS SO ORDERED.

22 Dated: January 13, 2015

23 /s/ Barbara A. McAuliffe
24 UNITED STATES MAGISTRATE JUDGE

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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).