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

DAMARIAS JONES,  
Plaintiff,  
v.  
J. HESS, et al.,  
Defendants.

Case No. 1:14-cv-00519 LJO DLB PC  
FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DISMISSAL OF  
ACTION FOR FAILURE TO PROSECUTE  
FIFTEEN-DAY OBJECTION DEADLINE

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Plaintiff Damarias Jones, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on April 14, 2014.

On April 16, 2014, the Court issued new case documents, which were returned by the United States Postal Service with a notation, “Undeliverable, Discharged,” on May 1, 2014. The Court’s subsequent order granting Plaintiff’s application to proceed in forma pauperis was also returned as undeliverable on May 2, 2014. The notation read, “Undeliverable, Not Deliverable as Addressed.”

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

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prejudice for failure to prosecute.” Federal Rule of Civil Procedure 41(b) also provides for dismissal of an action for failure to prosecute.<sup>1</sup>

Plaintiff’s address change was due by July 1, 2014, but he failed to file one and he has not otherwise been in contact with the Court. “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 April 2014, and the expeditious resolution of litigation and the Court’s need to manage its docket weigh in favor of dismissal. *Id.* at 1227.

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 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.

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<sup>1</sup> 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).

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**RECOMMENDATION**

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

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 fifteen (15) 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." Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: July 9, 2014

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE