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

ALTON DEAN,

Plaintiff,

v.

ROBERT SHARFFENBERG, M.D., et al.,

Defendants.

Case No. 1:14-cv-00768 DLB PC

ORDER DISMISSING CASE FOR FAILURE  
TO PROSECUTE

ORDER DIRECTING CLERK OF COURT  
TO CLOSE CASE

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Plaintiff Alton Dean, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on May 12, 2014.

On January 27, 2015, the District Court issued an order dismissing the complaint with leave to amend. The order was returned by the United States Postal Service as undeliverable on February 23, 2015.

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 prejudice for failure to prosecute.” Federal Rule of Civil Procedure 41(b) also provides for

1 dismissal of an action for failure to prosecute.<sup>1</sup>

2 Plaintiff's address change was due by May 4, 2015, but he failed to file one and he has not  
3 otherwise been in contact with the Court. "In determining whether to dismiss an action for lack of  
4 prosecution, the district court is required to consider several factors: (1) the public's interest in  
5 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of  
6 prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and  
7 (5) the availability of less drastic sanctions." *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988)  
8 (internal quotation marks and citation omitted); *accord Omstead v. Dell, Inc.*, 594 F.3d 1081, 1084  
9 (9th Cir. 2010); *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217,  
10 1226 (9th Cir. 2006). These factors guide a court in deciding what to do, and are not conditions  
11 that must be met in order for a court to take action. *In re PPA*, 460 F.3d at 1226 (citation omitted).

12 This case has been pending since 2014, and the expeditious resolution of litigation and the  
13 Court's need to manage its docket weigh in favor of dismissal. *Id.* at 1227. Further, the opposing  
14 party is necessarily prejudiced when he is unaware of the plaintiff's location during the discovery  
15 phase of the litigation. *Id.*

16 With respect to the fourth factor, "public policy favoring disposition of cases on their  
17 merits strongly counsels against dismissal," but "this factor lends little support to a party whose  
18 responsibility it is to move a case toward disposition on the merits but whose conduct impedes  
19 progress in that direction." *Id.* at 1228.

20 Finally, given the Court's and Defendant's inability to communicate with Plaintiff, there  
21 are no other reasonable alternatives available to address Plaintiff's failure to prosecute. *In re PPA*,  
22 460 F.3d at 1228-29; *Carey*, 856 F.2d at 1441.

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28 <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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**ORDER**

Accordingly, IT IS HEREBY ORDERED:

- 1) The action is DISMISSED WITHOUT PREJUDICE for Plaintiff's failure to prosecute.  
Fed. R. Civ. P. 41(b); Local Rule 183(b);
- 2) The Clerk of Court is DIRECTED to close the case.

IT IS SO ORDERED.

Dated: May 14, 2015

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE