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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICHARD J. SAVALA, SR.,
Plaintiff,
vs.
MARGARET MIMS, et al.,
Defendants.

1:14-cv-01232-LJO-GSA-PC
FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS CASE BE
DISMISSED, WITHOUT PREJUDICE, FOR
PLAINTIFF'S FAILURE TO PROSECUTE
OBJECTIONS, IF ANY, DUE WITHIN
TWENTY (20) DAYS

I. BACKGROUND

Richard J. Savala, Sr. ("Plaintiff") is a Fresno County Jail inmate proceeding pro se with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on August 6, 2014. (Doc. 1.)

II. FINDINGS

On August 6, 2014, the court mailed case documents to Plaintiff, including notice of his new case and an order requiring Plaintiff to complete and return the court's consent-to-Magistrate form within thirty days. (Doc. 3.) On August 7, 2014, the court issued an order granting Plaintiff leave to proceed in forma pauperis. (Doc. 4.) The documents and orders were served upon Plaintiff at his last known address at Fresno County Jail in Fresno, California. (Docs. 3, 4 - notice of electronic filing.)

1 On August 12, 2014 and August 13, 2014, the United States Postal Service returned the
2 documents and orders as undeliverable. (Court Docket.) Notations on the envelopes indicated
3 that Plaintiff is “Not in Custody.” (Id.) Plaintiff has not notified the court of any change in his
4 address. Absent such notice, service at a party’s prior address is fully effective. Local Rule
5 182(f). Pursuant to Local Rule 183(b), a party appearing in propria persona is required to keep
6 the court apprised of his or her current address at all times. Local Rule 183(b) provides:

7 “A party appearing in propria persona shall keep the Court and
8 opposing parties advised as to his or her current address. If mail
9 directed to a plaintiff in propria persona by the Clerk is returned
10 by the U.S. Postal Service, and if such plaintiff fails to notify the
11 Court and opposing parties within sixty-three (63) days thereafter
12 of a current address, the Court may dismiss the action without
13 prejudice for failure to prosecute.”

14 In this case, more than sixty-three days have passed since Plaintiff’s mail was returned,
15 and he has not notified the court of a current address.

16 In determining whether to dismiss an action for lack of prosecution, the court must
17 consider several factors: (1) the public’s interest in expeditious resolution of litigation; (2) the
18 court’s need to manage its docket; (3) the risk of prejudice to the respondents; (4) the public
19 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
20 alternatives. Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986); Omstead v. Dell, 594
21 F.3d 1081, 1084 (9th Cir. 2010). The court finds that the public’s interest in expeditiously
22 resolving this litigation and the court’s interest in managing the docket weigh in favor of
23 dismissal, as this case has been pending since August 6, 2014. The court cannot hold this case
24 in abeyance indefinitely based on Plaintiff’s failure to notify the court of his address. The third
25 factor, risk of prejudice to respondents, also weighs in favor of dismissal, since a presumption
26 of injury arises from the occurrence of unreasonable delay in prosecuting an action. Anderson
27 v. Air West, 542 F.2d 522, 524 (9th Cir. 1976); In re Phenylpropanolamine (PPA) Products
28 Liability Litigation, 460 F.3d 1217, 1228-29 (9th Cir. 2006). The fourth factor, public policy
favoring disposition of cases on their merits, is greatly outweighed by the factors in favor of
dismissal discussed herein. Finally, given the court’s inability to communicate with Plaintiff

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1 based on Plaintiff's failure to keep the court apprised of his current address, no lesser sanction
2 is feasible.

3 **III. RECOMMENDATIONS**

4 Based on the foregoing, the court HEREBY RECOMMENDS that this action be
5 DISMISSED without prejudice, based on Plaintiff's failure to prosecute.

6 These findings and recommendations are submitted to the United States District Judge
7 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **twenty**
8 **(20) days** after being served with these findings and recommendations, Plaintiff may file
9 written objections with the court. Such a document should be captioned "Objections to
10 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
11 objections within the specified time may waive the right to appeal the District Court's order.
12 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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14 IT IS SO ORDERED.

15 Dated: November 5, 2014

/s/ Gary S. Austin
16 UNITED STATES MAGISTRATE JUDGE
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