

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

SEAVON PIERCE,

Plaintiff,

v.

UNKNOWN,

Defendants.

Case No. 1:15-cv-00650 LJO DLB PC

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DISMISSAL OF  
ACTION FOR FAILURE TO PROSECUTE

TEN-DAY OBJECTION DEADLINE

---

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

On April 29, 2015, the Court issued an order granting in forma pauperis status. The order was returned on May 18, 2015, as undeliverable. On July 1, 2015, the Court issued a second order directing Plaintiff to file a consent or decline form. The order was returned as undeliverable on July 17, 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 July 27, 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. In addition, "public  
14 policy favoring disposition of cases on their merits strongly counsels against dismissal," but "this  
15 factor lends little support to a party whose responsibility it is to move a case toward disposition on  
16 the merits but whose conduct impedes progress in that direction." *Id.* at 1228.

17 Finally, given the Court's inability to communicate with Plaintiff, there are no other  
18 reasonable alternatives available to address Plaintiff's failure to prosecute. *In re PPA*, 460 F.3d at  
19 1228-29; *Carey*, 856 F.2d at 1441.

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

22 These Findings and Recommendations will be submitted to the United States District  
23 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **ten**  
24 **(10) days** after being served with these Findings and Recommendations, Plaintiff may file written  
25 objections with the Court. The document should be captioned "Objections to Magistrate Judge's  
26 Findings and Recommendations." Plaintiff is advised that failure to file objections within the

27  
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).

1 specified time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d  
2 1153 (9th Cir. 1991).

3  
4 IT IS SO ORDERED.

5 Dated: August 3, 2015

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28