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

DALE H. BLACK,

Plaintiff,

v.

FRESNO COUNTY SHERIFF  
DEPARTMENT, et al.,

Defendants.

Case No. 1:15-cv-00944 LJO DLB PC

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DISMISSAL OF  
ACTION FOR FAILURE TO PROSECUTE

TEN-DAY OBJECTION DEADLINE

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Plaintiff Dale H. Black, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on June 15, 2015.

On July 10, 2015, the Court issued an order granting Plaintiff's application to proceed in forma pauperis. The order was returned by the United States Postal Service as undeliverable on July 31, 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 October 8, 2015, but he failed to file one and he has  
3 not otherwise been in contact with the Court. "In determining whether to dismiss an action for  
4 lack of prosecution, the district court is required to consider several factors: (1) the public's  
5 interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the  
6 risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their  
7 merits; and (5) the availability of less drastic sanctions." *Carey v. King*, 856 F.2d 1439, 1440 (9th  
8 Cir. 1988) (internal quotation marks and citation omitted); *accord Omstead v. Dell, Inc.*, 594 F.3d  
9 1081, 1084 (9th Cir. 2010); *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460  
10 F.3d 1217, 1226 (9th Cir. 2006). These factors guide a court in deciding what to do, and are not  
11 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 June, and the expeditious resolution of litigation and the  
14 Court's need to manage its docket weigh in favor of dismissal. *Id.* at 1227. Further, the opposing  
15 party is necessarily prejudiced when he is unaware of the plaintiff's location during the discovery  
16 phase of the litigation. *Id.*

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

21 Finally, given the Court's and Defendant's inability to communicate with Plaintiff, there  
22 are no other reasonable alternatives available to address Plaintiff's failure to prosecute. *In re PPA*,  
23 460 F.3d at 1228-29; *Carey*, 856 F.2d at 1441.

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

26 These Findings and Recommendations will be submitted to the United States District  
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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).

1 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **ten**  
2 **(10) days** after being served with these Findings and Recommendations, the parties may file  
3 written objections with the Court. The document should be captioned “Objections to Magistrate  
4 Judge’s Findings and Recommendations.” The parties are advised that failure to file objections  
5 within the specified time may waive the right to appeal the District Court’s order. *Martinez v.*  
6 *Ylst*, 951 F.2d 1153 (9th Cir. 1991).

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IT IS SO ORDERED.

Dated: October 27, 2015

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE