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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

EFRAIN DEMARA,
Plaintiff,
v.
BARKER, et al.,
Defendants.

Case No. 1:15-cv-01576-LJO-BAM (PC)
FINDINGS AND RECOMMENDATIONS
REGARDING DISMISSAL OF ACTION FOR
FAILURE TO PROSECUTE
FOURTEEN (14) DAY DEADLINE

Findings and Recommendations

I. Background

Plaintiff Efrain Demara (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action under 42 U.S.C. § 1983. Plaintiff initiated this action on October 16, 2015. (ECF No. 1.)

On November 15, 2016, the Court issued a screening order dismissing Plaintiff’s complaint with leave to amend within thirty (30) days. (ECF No. 15.) When Plaintiff failed to file an amended complaint, the Court issued an order to show cause within twenty (20) days why the action should not be dismissed for failure to obey a court order, failure to state a claim, and failure to prosecute. (ECF No. 16.) On January 26, 2017, the Court’s order to show cause was returned as undeliverable, refused.

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1 **II. Discussion**

2 Plaintiff is required to keep the Court apprised of his current address at all times. Local
3 Rule 183(b) provides:

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

10 Federal Rule of Civil Procedure 41(b) also provides for dismissal of an action for failure to
11 prosecute.¹

12 According to the Court’s docket, Plaintiff’s address change was due no later than April 6,
13 2017. Plaintiff has failed to file a change of address and he has not otherwise been in contact
14 with the Court. “In determining whether to dismiss an action for lack of prosecution, the district
15 court is required to weigh several factors: (1) the public’s interest in expeditious resolution of
16 litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants;
17 (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less
18 drastic sanctions.” Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988) (internal quotation marks
19 and citation omitted); accord Omstead v. Dell, Inc., 594 F.3d 1081, 1084 (9th Cir. 2010); In re
20 Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1226 (9th Cir. 2006).
21 These factors guide a court in deciding what to do, and are not conditions that must be met in
22 order for a court to take action. In re PPA, 460 F.3d at 1226 (citation omitted).

23 Given Plaintiff’s failure to respond to this Court’s orders, the expeditious resolution of
24 litigation and the Court’s need to manage its docket weigh in favor of dismissal. Id. at 1227.
25 More importantly, given the Court’s apparent inability to communicate with Plaintiff, there are no
26 other reasonable alternatives available to address Plaintiff’s failure to prosecute this action and his
27 failure to apprise the Court of his current address. Id. at 1228–29; Carey, 856 F.2d at 1441. The
28 Court will therefore recommend that this action be dismissed based on Plaintiff’s failure to

¹ Courts may dismiss actions sua sponte under Rule 41(b) based on the plaintiff’s failure to prosecute. Hells Canyon Pres. Council v. U. S. Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005) (citation omitted).

1 prosecute this action.

2 **III. Conclusion and Recommendation**

3 For the reasons stated, the Court HEREBY RECOMMENDS that this action be dismissed,
4 without prejudice, based on Plaintiff's failure to prosecute. Fed. R. Civ. P. 41(b); Local Rule
5 183(b).

6 These Findings and Recommendations will be submitted to the United States District
7 Judge assigned to the case, under the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen (14)**
8 **days** after being served with these Findings and Recommendations, Plaintiff may file written
9 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
10 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
11 specified time may result in the waiver of the "right to challenge the magistrate's factual
12 findings" on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v.
13 Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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15 IT IS SO ORDERED.

16 Dated: April 14, 2017

17 /s/ Barbara A. McAuliffe
18 UNITED STATES MAGISTRATE JUDGE
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