

1 On July 14, 2017, Defendants filed an exhaustion-related motion for summary judgment.
2 Plaintiff filed an opposition on July 31, 2017, and Defendants filed a reply on August 1, 2017.

3 On November 14, 2017, the undersigned issued Findings and Recommendations
4 recommending that Defendants' exhaustion-related motion for summary judgment be denied. The
5 Findings and Recommendations were adopted in full on March 23, 2018, and Defendants' exhaustion-
6 related motion for summary judgment was denied

7 On November 30, 2017, Defendants filed a motion for judgment on the pleadings. Plaintiff did
8 not file an opposition. On May 2, 2018, the undersigned issued Findings and Recommendations
9 recommending that Defendants' motion for judgment on the pleadings be denied. The Findings and
10 Recommendations were adopted in full on July 24, 2018.

11 As previously stated, on October 3, 2018, Defendants filed a motion to dismiss the action for
12 Plaintiff's failure to prosecute. Plaintiff did not file an opposition and the time to do has expired.
13 Local Rule 230(l).

14 **II.**
15 **DISCUSSION**

16 At the time this action was filed, Plaintiff was incarcerated the Fresno County Jail. Plaintiff's
17 most recent address of record is Dismas Charities, Inc. 100 Tishomingo Street, Tupelo, MS. 38804,
18 and Plaintiff was scheduled to be released on April 18, 2018. (See ECF No. 63.)

19 On May 22, 2018, the Court received a returned order that was issued on May 2, 2018. The
20 sixty-three (63) day period for notice of change of address has now expired, and Plaintiff has not filed
21 a notice of change of address or otherwise notified the Court.

22 Pursuant to Local Rule 182(f), a party appearing in propria persona is required to keep the
23 Court apprised of his or her current address at all times. Plaintiff was advised of this rule in the
24 Court's First Informational Order. (ECF No. 4.) Local Rule 183(b) provides, in pertinent part:

25 If mail directed to a plaintiff in propria persona by the Clerk is returned by the U.S. Postal
26 Service, and if such plaintiff fails to notify the Court and opposing parties within sixty-three
27 (63) days thereafter of a current address, the Court may dismiss the action without prejudice
28 for failure to prosecute.

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1 In the instant case, more than sixty-three days have passed since Plaintiff's mail was returned,
2 and he has not notified the Court of a current address.

3 "In determining whether to dismiss an action for lack of prosecution, the district court is
4 required to consider several factors: '(1) the public's interest in expeditious resolution of litigation; (2)
5 the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
6 favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.'" Carey
7 v. King, 856 F.2d 1439, 1440 (9th Cir. 1988) (quoting Henderson v. Duncan, 779 F.2d 1421, 1423
8 (9th Cir. 1986)). These factors guide a court in deciding what to do, and are not conditions that must
9 be met in order for a court to take action. In re Phenylpropanolamine (PPA) Prods. Liab. Lit., 460
10 F.3d 1217, 1226 (9th Cir. 2006) (citation omitted).

11 In this instance, Local Rule 183(b) provides for the dismissal of an action based on returned
12 mail. Given the Court's inability to communicate with Plaintiff, dismissal is warranted and there are
13 no other reasonable alternatives available. See Carey, 856 F.2d at 1441.

14 III.

15 RECOMMENDATIONS

16 Based on the foregoing, it is hereby RECOMMENDED that:

- 17 1. This action be DISMISSED, without prejudice, based on Plaintiff's failure to
18 prosecute; and
- 19 2. Defendants' motion for summary judgment, filed on October 22, 2018, be denied as
20 moot.

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1 These Findings and Recommendations will be submitted to the United States District Judge
2 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen (14) days**
3 after being served with these Findings and Recommendations, the parties may file written objections
4 with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and
5 Recommendations.” The parties are advised that failure to file objections within the specified time
6 may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir.
7 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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9 IT IS SO ORDERED.

10 Dated: October 25, 2018


UNITED STATES MAGISTRATE JUDGE