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

GARY RAY BETTENCOURT,  
Plaintiff,  
v.  
PARKER, *et al.*,  
Defendants.

Case No. 1:16-cv-00150-NODJ-BAM (PC)  
**FINDINGS AND RECOMMENDATION TO  
DISMISS ACTION FOR FAILURE TO  
PROSECUTE**  
**FOURTEEN (14) DAY DEADLINE**

**I. Background**

Plaintiff Gary Ray Bettencourt (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff’s claims of deliberate indifference in violation of the Eighth Amendment against Defendant Crooks for pulling two teeth that did not need to be pulled, and against Defendants Parker and Guzman for filing down six healthy teeth with a dental tool used for drilling cavities.

On December 1, 2023, this case was temporarily reassigned to No District Court Judge (NODJ). (ECF No. 108.) On December 15, 2023, the Court’s order reassigning the case was returned as “Undeliverable, Inactive.” Plaintiff’s notice of change of address was therefore due on or before February 16, 2024. Local Rule 183(b).

Plaintiff has not filed a notice of change of address or otherwise communicated with the Court.

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.<sup>1</sup>

12 Plaintiff's address change was due no later than February 16, 2024. Plaintiff has failed to  
13 file a change of address and he has not otherwise been in contact with the Court. "In determining  
14 whether to dismiss an action for lack of prosecution, the district court is required to weigh several  
15 factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to  
16 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
17 disposition of cases on their merits; and (5) the availability of less drastic sanctions." *Carey v.*  
18 *King*, 856 F.2d 1439, 1440 (9th Cir. 1988) (internal quotation marks and citation omitted); *accord*  
19 *Omstead v. Dell, Inc.*, 594 F.3d 1081, 1084 (9th Cir. 2010); *In re Phenylpropanolamine (PPA)*  
20 *Products Liability Litigation*, 460 F.3d 1217, 1226 (9th Cir. 2006). These factors guide a court in  
21 deciding what to do, and are not conditions that must be met in order for a court to take action. *In*  
22 *re PPA*, 460 F.3d at 1226 (citation omitted).

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

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<sup>1</sup> 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 on Plaintiff's failure to prosecute this action.

2 **III. Conclusion and Recommendation**

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

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

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14 IT IS SO ORDERED.

15 Dated: February 29, 2024

/s/ Barbara A. McAuliffe  
16 UNITED STATES MAGISTRATE JUDGE

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