

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

MATTHEW ALLEN,
Plaintiff,
v.
S. HUBBARD, et al.,
Defendants.

Case No. 1:16-cv-01751-BAM (PC)
ORDER REGARDING PLAINTIFF’S
RESPONSE TO SHOW CAUSE ORDER
(ECF No. 16)
ORDER DISCHARGING ORDER TO SHOW
CAUSE WHY THIS ACTION SHOULD NOT
BE DISMISSED FOR FAILURE TO STATE A
CLAIM, FAILURE TO OBEY A COURT
ORDER, AND FAILURE TO PROSECUTE
(ECF No. 14)

Plaintiff Matthew Allen (“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 November 18, 2016. (ECF No. 1.)

On June 8, 2017, the Court issued an order striking Plaintiff’s unsigned complaint and requiring Plaintiff to file a signed complaint within thirty (30) days. (ECF No. 13.) Plaintiff failed to file an amended complaint. Therefore, on July 19, 2017, the Court issued an order for Plaintiff to show cause why this action should not be dismissed for failure to state a claim, failure to obey a court order, and failure to prosecute. (ECF No. 14.) The Court informed Plaintiff that he could comply with the order to show cause by filing an amended complaint. (*Id.* at 2.)

On August 16, 2017, Plaintiff filed a signed first amended complaint, (ECF No. 15), and a document filed as a response to the Court’s show cause order, (ECF No. 16). Plaintiff indicates

1 that after he was transferred to Salinas Valley State Prison, he tried to mail a letter to the Court on
2 March 14, 2017, inquiring about the status of his case. However, that letter was returned to him,
3 and the Court's later orders continued to be sent to his old address at California Men's Colony.
4 Plaintiff requests that the Court send any documents requiring his signature in order to continue
5 his case to Salinas Valley State Prison. (ECF No. 16.)

6 Plaintiff is reminded that he is required to keep the Court apprised of his current address at
7 all times. Local Rule 183 (b) provides:

8 **Address Changes.** A party appearing in propria persona shall keep the Court and
9 opposing parties advised as to his or her current address. If mail directed to a
10 plaintiff in propria persona by the Clerk is returned by the U.S. Postal Service,
11 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.

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

14 The Court has not received a notice of change of address form from Plaintiff. Plaintiff's
15 first amended complaint, which was signed and dated on August 13, 2017, four days after the date
16 on Plaintiff's response to the show cause order, continues to list California Men's Colony as
17 Plaintiff's address. (See ECF No. 15, pp. 1, 7.) Moreover, none of the orders served on Plaintiff
18 at his California Men's Colony address have been returned to the Court. Based on Plaintiff's
19 letter and the attached Inmate Statement Report from Salinas Valley State Prison, the Court has
20 updated Plaintiff's address for the purposes of service of the instant order. However, Plaintiff is
21 admonished that in the future, he is responsible for notifying the Court of any change to his
22 address. Failure to do so will result in a dismissal of this action for failure to prosecute. Local
23 Rule 183(b); Fed. R. Civ. P. 41(b).

24 Based on the filing of the signed first amended complaint, the Court finds good cause to
25 discharge the July 19, 2017 order to show cause. Accordingly, the Court's July 19, 2017 order to
26 show cause (ECF No. 14) is HEREBY DISCHARGED. In addition, Plaintiff's request for any

27 _____
28 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 documents requiring his signature (ECF No. 16) is DENIED as moot. The Court advises Plaintiff
2 that his first amended complaint will be screened in due course.

3
4 IT IS SO ORDERED.

5 Dated: August 25, 2017

/s/ Barbara A. McAuliffe
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