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2 **UNITED STATES DISTRICT COURT**

3 EASTERN DISTRICT OF CALIFORNIA

4  
5 DEVONNE RANDOLPH,

6 Petitioner,

7 v.

8 MATEVOUSIAN, Warden,

9 Respondent.

Case No. 1:16-cv-01836-AWI-SKO HC

FINDINGS AND RECOMMENDATION  
THAT THE COURT DISMISS THE CASE  
FOR FAILURE TO PROSECUTE

(Doc. 7)

10  
11 On December 17, 2016, Petitioner Devonne Randolph, a federal prisoner proceeding *pro se*,  
12 filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. On December 28, 2016, the  
13 Magistrate Judge issued findings and recommendations in which she recommended that the Court  
14 dismiss the petition for lack of jurisdiction. The findings and recommendations provided that  
15 Petitioner could file objections within thirty days.  
16

17 On January 12, 2017, the findings and recommendations, which had been mailed to Plaintiff,  
18 were returned to the Clerk of Court as undeliverable. Local Rule 183 provides that "[i]f mail  
19 directed to a plaintiff *in propria persona* by the Clerk is returned by the U.S. Postal Service, and if  
20 such Plaintiff fails to notify the Court and opposing parties within sixty-three (63) days thereafter of  
21 a current address, the Court may dismiss the action without prejudice for failure to prosecute."  
22

23 While the sixty-three day penalty was running, Petitioner filled a new petition also denominated  
24 *Devonne Randolph v. Warden Matevousian* (No. 1:17-cv-00397-LJO-SKO) but bearing a slightly  
25 different mailing address that also purported to be that of the U.S. Penitentiary, Atwater, California.  
26 On March 22, 2017, the Clerk of Court re-served the findings and recommendations on Petitioner  
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1 using the revised address. On April 18, 2017, the mail was again returned to the Court as  
2 undeliverable.

3 In the meantime, on April 17, 2017, in *Devonne Randolph v. Warden Matevousian* (No.  
4 1:17-cv-00397-LJO-SKO), Petitioner filed a change of address to Lewisburg Federal Penitentiary,  
5 Lewisburg, Pennsylvania. Petitioner did not file a change of address in the above-captioned case  
6 despite the warning set forth on change of address form that he must “file an original change of  
7 address in each of [his] open cases.” See Doc. 4, *Devonne Randolph v. Warden Matevousian* (No.  
8 1:17-cv-00397-LJO-SKO). As a result, the Court should dismiss the above-captioned case and  
9 allow the later case to proceed.  
10

11 **Conclusion and Recommendation**

12 Plaintiff having failed to advise the Court of a current address for over sixty-three days, the  
13 undersigned recommends that the Court dismiss the above-captioned case for failure to prosecute.

14 These Findings and Recommendations will be submitted to the United States District Judge  
15 assigned to the case, pursuant to the provisions of 28 U.S.C § 636(b)(1). Within **thirty (30) days**  
16 after being served with these Findings and Recommendations, Petitioner may file written objections  
17 with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and  
18 Recommendations.” Petitioner is advised that failure to file objections within the specified time may  
19 constitute waiver of the right to appeal the District Court's order. *Wilkerson v. Wheeler*, 772 F.3d  
20 834, 839 ((9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).  
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23  
24 IT IS SO ORDERED.

25 Dated: April 25, 2017

26 /s/ Sheila K. Oberto  
27 UNITED STATES MAGISTRATE JUDGE  
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