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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DANIEL HERRERA, *et al.*,
Plaintiff,
v.
CALIFORNIA STATE SUPERIOR
COURTS, *et al.*,
Defendants.

Case No. 1:17-cv-0386-AWI-BAM
FINDINGS AND RECOMMENDATIONS
REGARDING DISMISSAL OF ACTION FOR
FAILURE TO PROSECUTE
FOURTEEN (14) DAY DEADLINE

Findings and Recommendations

I. Background

Plaintiff Daniel Herrera (“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 March 16, 2017. (ECF No. 1). On April 5, 2017, the Court issued an order granting Plaintiff’s motion to proceed in forma pauperis. (ECF No. 3). On May 16, 2017, the Court’s order was returned as undeliverable.

II. Discussion

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

Address Changes. A party appearing *in propria persona* shall keep the Court

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

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

8 According to the Court's docket, Plaintiff's address change was due no later than April
9 24, 2017. Plaintiff has failed to file a change of address and he has not otherwise been in contact
10 with the Court. "In determining whether to dismiss an action for lack of prosecution, the district
11 court is required to weigh several factors: (1) the public's interest in expeditious resolution of
12 litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants;
13 (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less
14 drastic sanctions." *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988) (internal quotation marks
15 and citation omitted); *accord Omstead v. Dell, Inc.*, 594 F.3d 1081, 1084 (9th Cir. 2010); *In re*
16 *Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1226 (9th Cir. 2006).
17 These factors guide a court in deciding what to do, and are not conditions that must be met in
18 order for a court to take action. *In re PPA*, 460 F.3d at 1226 (citation omitted).

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

26 **III. Conclusion and Recommendation**

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

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).

1 183(b).

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

10
11 IT IS SO ORDERED.

12 Dated: August 2, 2017

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

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