

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

GUILLERMO G. PAEZ, JR.,

Plaintiff,

v.

FRESNO COUNTY SHERIFF’S
DEPARTMENT,

Defendant.

Case No. 1:17-cv-00455-BAM (PC)

FINDINGS AND RECOMMENDATIONS
REGARDING DISMISSAL OF ACTION FOR
FAILURE TO PROSECUTE

FOURTEEN (14) DAY DEADLINE

Findings and Recommendations

I. Background

Plaintiff Guillermo G. Paez, Jr. (“Plaintiff”) filed this action while housed at the Fresno County Jail and is proceeding pro se and in forma pauperis in this civil rights action under 42 U.S.C. § 1983. Plaintiff initiated this action on March 30, 2017. (ECF No. 1.) This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On November 29, 2017, the Court issued a screening order granting Plaintiff leave to file an amended complaint within thirty (30) days. (ECF No. 10.) On December 15, 2017, the Court’s screening order was returned as “Undeliverable, Not in Custody.” Plaintiff has not filed an amended complaint, 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.¹

12 According to the Court’s docket, Plaintiff’s address change was due no later than
13 February 23, 2018. Plaintiff has failed to file a change of address and he has not otherwise been
14 in contact with the Court. “In determining whether to dismiss an action for lack of prosecution,
15 the district court is required to weigh several factors: (1) the public’s interest in expeditious
16 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the
17 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the
18 availability of less drastic sanctions.” Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988)
19 (internal quotation marks and citation omitted); accord Omstead v. Dell, Inc., 594 F.3d 1081,
20 1084 (9th Cir. 2010); In re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d
21 1217, 1226 (9th Cir. 2006). These factors guide a court in deciding what to do, and are not
22 conditions that must be met in order for a court to take action. In re PPA, 460 F.3d at 1226
23 (citation omitted).

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

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 Court will therefore recommend that this action be dismissed based on Plaintiff's failure to
2 prosecute this action.

3 **III. Conclusion and Recommendation**

4 Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a
5 district judge to this action.

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

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

16
17 IT IS SO ORDERED.

18 Dated: March 5, 2018

18 /s/ Barbara A. McAuliffe
19 UNITED STATES MAGISTRATE JUDGE