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

ANTHONY CEASAR HERNANDEZ,
Plaintiff,
v.
BALLAM, et al.,
Defendants.

Case No. 1:17-cv-00468-LJO-BAM (PC)
FINDINGS AND RECOMMENDATION
REGARDING DISMISSAL OF ACTION FOR
FAILURE TO PROSECUTE
FOURTEEN (14) DAY DEADLINE

I. Background

Plaintiff Anthony Ceasar Hernandez is proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. 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 January 31, 2019, the Court issued a discovery and scheduling order and served Plaintiff with the order at his address of record. (ECF No. 72.) On February 14, 2019, Plaintiff filed a notice of change of address. (ECF No. 73.) On February 25, 2019, the Court’s discovery and scheduling order was returned as “Undeliverable, Not in Custody – RTS.” On February 28, 2019, the Court re-served the discovery and scheduling order on Plaintiff at the address provided in Plaintiff’s February 14, 2019 notice of change of address. However, on March 11, 2019, the Court’s discovery and scheduling order was returned from the address in Plaintiff’s notice of change of address as “Undeliverable, RTS – Not in Custody.” Plaintiff has not filed a new notice of change of address

1 or otherwise communicated with the Court.

2 II. Discussion

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

5 **Address Changes.** A party appearing in propria persona shall keep the Court and
6 opposing parties advised as to his or her current address. If mail directed to a
7 plaintiff in propria persona by the Clerk is returned by the U.S. Postal Service, and
8 if such plaintiff fails to notify the Court and opposing parties within sixty-three (63)
9 days thereafter of a current address, the Court may dismiss the action without
10 prejudice for failure to prosecute.

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

13 According to Local Rule 183(b), Plaintiff's address change was due no later than May 13,
14 2019. Plaintiff has failed to file a change of address and he has not otherwise been in contact
15 with the Court.

16 "In determining whether to dismiss an action for lack of prosecution, the district court is
17 required to weigh several factors: (1) the public's interest in expeditious resolution of litigation;
18 (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
19 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
20 sanctions." Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988) (internal quotation marks and
21 citation omitted); accord Omstead v. Dell, Inc., 594 F.3d 1081, 1084 (9th Cir. 2010); In re
22 Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1226 (9th Cir. 2006).
23 These factors guide a court in deciding what to do and are not conditions that must be met in
24 order for a court to take action. In re PPA, 460 F.3d at 1226 (citation omitted).

25 Here, the expeditious resolution of litigation and the Court's need to manage its docket
26 weigh in favor of dismissal. Id. at 1227. More importantly, given the Court's apparent inability
27 to communicate with Plaintiff, there are no other reasonable alternatives available to address
28 Plaintiff's failure to prosecute this action and his failure to apprise the Court of his current

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 address. Id. at 1228–29; Carey, 856 F.2d at 1441. The Court will therefore recommend that this
2 action be dismissed based on Plaintiff’s failure to prosecute this action.

3 **III. Conclusion and Recommendation**

4 Accordingly, for the reasons explained above, it is HEREBY RECOMMENDED that the
5 instant action be dismissed, without prejudice, based on Plaintiff’s failure to prosecute. Fed. R.
6 Civ. P. 41(b); Local Rule 183(b).

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

15
16 IT IS SO ORDERED.

17 Dated: May 17, 2019

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