

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF CALIFORNIA
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4 DARLA GAY BRUCE,
5 Plaintiff,
6 v.
7 BLOOM,
8 Defendant.
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Case No. 1:17-cv-00914-DAD-EPG

FINDINGS AND RECOMMENDATIONS
THAT THIS CASE BE DISMISSED FOR
PLAINTIFF'S FAILURE TO COMPLY
WITH A COURT ORDER AND FAILURE
TO PROSECUTE

OBJECTIONS DUE WITHIN FOURTEEN
(14) DAYS

10 Darla Gay Bruce ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma*
11 *pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on
12 July 3, 2017.

13 On July 11, 2017, the Court mailed two Court Orders to Plaintiff at her address on the
14 docket. (ECF No. 5). Those Orders were returned as undeliverable (no reason given) shortly
15 after they were mailed.

16 A *pro se* plaintiff must keep the Court and opposing parties informed of the party's
17 correct current address. Local Rule 182(f). If a party moves to a different address without filing
18 and serving a notice of change of address, documents served at a party's old address of record
19 shall be deemed received even if not actually received. *Id.*

20 If mail directed to a *pro se* plaintiff at the address of record is returned by the United
21 States Postal Service as undeliverable, the order will not be re-served a second time absent a
22 notice of change of address. If a *pro se* plaintiff's address is not updated within sixty-three
23 (63) days of mail being returned as undeliverable, the case will be dismissed for failure to
24 prosecute. Local Rule 183(b).

25 On October 4, 2017, the Court issued an Order directing Plaintiff to show cause within
26 14 days as to why this case should not be dismissed for failure to prosecute and failure to
27 maintain a current mailing address. (ECF No. 9.) Plaintiff did not file a written response to the
28 Order to show cause, as directed. Instead, the Court received a notice that the mailing was

1 again returned as undeliverable.

2 Plaintiff failed to keep the Court informed of her current address, as required by Local
3 Rules 182 and 183. Accordingly, the Court will recommend that Plaintiff's case be dismissed
4 for failure to comply with a court order and failure to prosecute.

5 "In determining whether to dismiss a[n] [action] for failure to prosecute or failure to
6 comply with a court order, the Court must weigh the following factors: (1) the public's interest
7 in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
8 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the
9 public policy favoring disposition of cases on their merits." *Pagtalunan v. Galaza*, 291 F.3d
10 639, 642 (9th Cir. 2002) (citing *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

11 "The public's interest in expeditious resolution of litigation always favors dismissal."
12 *Id.* (quoting *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)). Accordingly,
13 this factor weighs in favor of dismissal.

14 Turning to the risk of prejudice, "pendency of a lawsuit is not sufficiently prejudicial in
15 and of itself to warrant dismissal." *Id.* at 642 (citing *Yourish*, 191 F.3d at 991). However,
16 "delay inherently increases the risk that witnesses' memories will fade and evidence will
17 become stale," *Id.* at 643, and it is Plaintiff's failure to maintain a current mailing address that is
18 causing delay. The case is now stalled as a result. Therefore, the third factor weighs in favor
19 of dismissal.

20 As for the availability of lesser sanctions, at this stage in the proceedings there is little
21 available to the Court which would constitute a satisfactory lesser sanction while protecting the
22 Court from further unnecessary expenditure of its scarce resources. Monetary sanctions are of
23 little use, considering Plaintiff's incarceration and *in forma pauperis* status, and given the stage
24 of these proceedings, the preclusion of evidence or witnesses is not available. Additionally,
25 because the dismissal being considered in this case is without prejudice, the Court is stopping
26 short of using the harshest possible sanction of dismissal with prejudice.

27 Finally, because public policy favors disposition on the merits, this factor weighs
28 against dismissal. *Id.*

1 After weighing the factors, including the Court's need to manage its docket, the Court
2 finds that dismissal is appropriate. Accordingly, the Court HEREBY RECOMMENDS that:

- 3 1. This action be dismissed without prejudice, based on Plaintiff's failure to
4 prosecute this case and failure to maintain a current mailing address; and
5 2. The Clerk of Court be directed to close this case.

6 These findings and recommendations are submitted to the district judge assigned to the
7 case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen days after being
8 served with these findings and recommendations, Plaintiff may file written objections with the
9 court. Such a document should be captioned "Objections to Magistrate Judge's Findings and
10 Recommendations." Plaintiff is advised that failure to file objections within the specified time
11 may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.
12 2014) (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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14 IT IS SO ORDERED.

15 Dated: November 15, 2017

16 /s/ Eric P. Grogan
17 UNITED STATES MAGISTRATE JUDGE
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