



1 On August 22, 2019, the Court’s August 1, 2019 order was returned as “Undeliverable,  
2 Inmate Refused.” Also, on August 22, 2019, the Court’s August 9, 2019 order was returned as  
3 “Undeliverable, Refused.” On September 9, 2019, the Court’s August 13, 2019 order was  
4 returned as “Undeliverable, Unable to Forward.” Plaintiff has not filed a notice of change of  
5 address, filed a second amended complaint, or otherwise communicated with the Court.

6 **II. Discussion**

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

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

13 Federal Rule of Civil Procedure 41(b) also provides for dismissal of an action for failure to  
14 prosecute.<sup>1</sup>

15 According to Local Rule 183(b), Plaintiff’s address change was due no later than October  
16 24, 2019. Plaintiff has failed to file a change of address and he has not otherwise been in contact  
17 with the Court.

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

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28 <sup>1</sup> 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 Here, the expeditious resolution of litigation and the Court’s need to manage its docket  
2 weigh in favor of dismissal. Id. at 1227. More importantly, given the Court’s apparent inability  
3 to communicate with Plaintiff, there are no other reasonable alternatives available to address  
4 Plaintiff’s failure to prosecute this action and his failure to apprise the Court of his current  
5 address. Id. at 1228–29; Carey, 856 F.2d at 1441. The Court will therefore recommend that this  
6 action be dismissed based on Plaintiff’s failure to prosecute this action.

7 **III. Order and Recommendation**

8 Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a  
9 Fresno District Judge to this action.

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

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

21  
22 IT IS SO ORDERED.

23 Dated: October 31, 2019

24 /s/ Barbara A. McAuliffe  
25 UNITED STATES MAGISTRATE JUDGE  
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