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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 FERNANDO TALAVERA,

12 Plaintiff,

13 vs.

14 D. STEBBINS, et al.,

15 Defendants.
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1:20-cv-00580-AWI-GSA-PC

**FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS CASE
BE DISMISSED, WITHOUT
PREJUDICE, FOR PLAINTIFF'S
FAILURE TO PROSECUTE**

**OBJECTIONS, IF ANY, DUE WITHIN
TWENTY (20) DAYS**

18 **I. BACKGROUND**

19 Fernando Talavera ("Plaintiff") is a former prisoner proceeding *pro se* and *in forma*
20 *pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. In the original Complaint,
21 filed on April 23, 2020, Plaintiff names as defendants ten correctional officers employed at Kern
22 Valley State Prison and alleges violations of Plaintiff's constitutional rights to medical care,
23 mental health care, basic necessities, proper disciplinary proceedings, and freedom from
24 retaliation. (ECF No. 1.)

25 **II. FINDINGS**

26 On May 4, 2020, the court issued an Order granting Plaintiff leave to proceed *in forma*
27 *pauperis* in this case. (ECF No. 5.) The Order was served on Plaintiff at his address of record
28 at California State Prison-Sacramento in Represa, California. (Court Record.) On May 14, 2020,

1 Plaintiff filed a notice of change of address to 47254 Diane Street, Indio, California 92201. (ECF
2 No. 8.) On May 14, 2020, the court re-served the court's May 4, 2020 Order on Plaintiff at the
3 new address. (Court Record.) On May 19, 2020, the United States Postal Service returned the
4 Order as undeliverable. (Court Docket.) A notation on the envelope indicated "Undeliverable,
5 Paroled." (Id.) Plaintiff has not notified the court of any current change in his address. Absent
6 such notice service at a party's prior address is fully effective. Local Rule 182(f). Pursuant to
7 Local Rule 183(b), a party appearing *in propria persona* is required to keep the court apprised of
8 his or her current address at all times. Local Rule 183(b) provides:

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

16 In this case, more than sixty-three days have passed since Plaintiff's mail was returned
17 and he has not notified the court of a current address.¹

18 In determining whether to dismiss an action for lack of prosecution, the court must
19 consider several factors: (1) the public's interest in expeditious resolution of litigation; (2) the
20 court's need to manage its docket; (3) the risk of prejudice to the respondents; (4) the public
21 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
22 alternatives. Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986); Omstead v. Dell, 594
23 F.3d 1081, 1084 (9th Cir. 2010). The court finds that the public's interest in expeditiously
24 resolving this litigation and the court's interest in managing the docket weigh in favor of
25 dismissal, as this case has been pending since April 23, 2020. The court cannot hold this case in
26 abeyance indefinitely based on Plaintiff's failure to notify the court of his address. The third
27 factor, risk of prejudice to respondents, also weighs in favor of dismissal, since a presumption of
28 injury arises from the occurrence of unreasonable delay in prosecuting an action. Anderson v.

¹The Clerk's Notice Reassigning Case, issued on May 8, 2020 and served on Plaintiff at California State
Prison-Sacramento in Represa, California, was also re-served on Plaintiff at his address in Indio, California, on
May 14, 2020, and returned to the Court by the United States Postal Service on May 19, 2020, as "Undeliverable,
Paroled." (Court Record.)

1 Air West, 542 F.2d 522, 524 (9th Cir. 1976); In re Phenylpropanolamine (PPA) Products Liability
2 Litigation, 460 F.3d 1217, 1228-29 (9th Cir. 2006). The fourth factor, public policy favoring
3 disposition of cases on their merits, is greatly outweighed by the factors in favor of dismissal
4 discussed herein. Finally, given the court's inability to communicate with Plaintiff based on
5 Plaintiff's failure to keep the court apprised of his current address, no lesser sanction is feasible.

6 **III. RECOMMENDATIONS AND CONCLUSION**

7 Based on the foregoing, the court HEREBY RECOMMENDS that:

- 8 1. This action be DISMISSED without prejudice, based on Plaintiff's failure to
9 prosecute; and
- 10 2. The Clerk be directed to CLOSE this case.

11 These findings and recommendations are submitted to the United States District Judge
12 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
13 **(14) days** after being served with these findings and recommendations, Plaintiff may file written
14 objections with the court. Such a document should be captioned "Objections to Magistrate
15 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within
16 the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
17 F.2d 1153 (9th Cir. 1991).

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19 IT IS SO ORDERED.

20 Dated: August 9, 2020

/s/ Gary S. Austin
21 UNITED STATES MAGISTRATE JUDGE
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