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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 MANUEL URRIETA, an individual,,

10 Plaintiff,

11 v.

12 CITY OF FIRCREST, a municipal
corporation; CHRIS ROBERTS, an
individual,

13 Defendant.
14

CASE NO. 3:15-cv-05245RJB

ORDER ON DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT AND DISMISSAL OF
CASE FOR FAILURE TO
PROSECUTE

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16 This matter comes before the court on Defendants' Motion for Summary Judgment. Dkt.
17 26. Plaintiff has not responded to the motion. The Court has considered the motion and the
18 remainder of the file herein.

19 Defendants seek dismissal (1) as a matter of law, on the basis that Officer Chris Roberts
20 is entitled to qualified immunity; (2) as a sanction for failure to attend a deposition, under
21 Fed.R.Civ.P. 37(d); and (3) for failure to prosecute, under Fed.R.Civ.P. 41(b).

22 Plaintiff, a *pro se* litigant, apparently failed to update his mailing address and to attend
23 his deposition. Dkt. 26. He was previously incarcerated at Washington Corrections Center until
24 December 5, 2015, when he was released. Dkt. 25, at 6. Upon release, Plaintiff failed to update

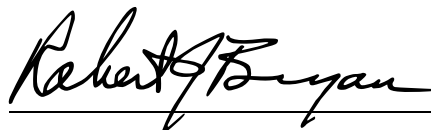
1 his mailing address. *Id.* at 6-7. On December 7, 2015, a copy of a subpoena was sent to Plaintiff
2 at his Washington Corrections Center address, but was later returned as undeliverable. *Id.*
3 Defendants also served a notice of deposition on Plaintiff at the same address, which was
4 returned as undeliverable. *Id.* Plaintiff did not attend the deposition noted by Defendants for
5 December 28, 2015. *Id.*

6 On the record presented, the Court cannot conclude that Plaintiff is aware of Defendants'
7 Motion for Summary Judgment, because Plaintiff's lack of response and failure to attend the
8 deposition can be traced to an incorrect mailing address. While Plaintiff has the duty to timely
9 update his mailing address, his circumstances may make that difficult. The Court cannot in good
10 conscience adjudicate the merits of the case, so the motion for summary judgment should be
11 denied. The Court also lacks sufficient information to dismiss the case for Plaintiff's failure to
12 appear for a deposition. However, given Plaintiff's general lack of responsiveness, dismissal for
13 failure to prosecute is appropriate.

14 THEREFORE, Defendants' Motion for Summary Judgment (Dkt. 26) should be
15 DENIED WITHOUT PREJUDICE. Defendants' request to dismiss under Fed.R.Civ.P. 37(d) is
16 DENIED. Defendants' request to dismiss under Fed.R.Civ.P. 41(b) is GRANTED. This case is
17 HEREBY DISMISSED.

18 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
19 to any party appearing pro se at said party's last known address.

20 Dated this 22nd day of February, 2016.

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23 ROBERT J. BRYAN
24 United States District Judge