

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

ANTHONY R. TURNER,

1:06-cv-01703-OWW-GSA-PC

Plaintiff,

vs.

FINDINGS AND RECOMMENDATION TO
DISMISS CASE FOR PLAINTIFF'S
FAILURE TO PROSECUTE

JEANNE S. WOODFORD, et al.,

Defendants.

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983.

On October 6, 2008, the court issued two Orders requiring plaintiff to inform the court whether he would consent to Magistrate Judge jurisdiction. (Docs. 9, 10.) On October 29, 2008, the orders served on plaintiff were returned by the U.S. Postal Service as undeliverable, with a notation that plaintiff is not at Pleasant Valley State Prison (PVSP). Plaintiff's address-of-record at the court is at Pleasant Valley State Prison.

Pursuant to Local Rule 83-183(b), a party appearing in propria persona is required to keep the court apprised of his or her current address at all times. Local Rule 83-183(b) provides, in pertinent part:

If mail directed to a plaintiff in propria persona by the Clerk is returned by the U.S. Postal Service, and if such plaintiff fails to notify the Court and opposing parties within sixty (60) days thereafter of a current address, the Court may dismiss the action without prejudice for failure to prosecute.

In the instant case, more than sixty days have passed since plaintiff's mail was returned and he has not notified the court of a current address.

In determining whether to dismiss an action for lack of prosecution, the court must consider several factors: (1) the public's interest in expeditious resolution of litigation; (2) the

1 court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
2 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
3 sanctions. Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856 F.2d
4 1439 (9th Cir. 1988). The court finds that the public's interest in expeditiously resolving this
5 litigation and the court's interest in managing the docket weigh in favor of dismissal, as this
6 case has been pending at this court for two years without any correspondence from plaintiff.
7 The court cannot hold this case in abeyance indefinitely based on plaintiff's failure to notify the
8 court of his address. The third factor, risk of prejudice to defendants, also weighs in favor of
9 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay in
10 prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth
11 factor -- public policy favoring disposition of cases on their merits -- is greatly outweighed by
12 the factors in favor of dismissal discussed herein. Finally, given the court's inability to
13 communicate with plaintiff based on plaintiff's failure to keep the court apprised of his current
14 address, no lesser sanction is feasible.

15 RECOMMENDATION

16 Accordingly, the court HEREBY RECOMMENDS that this action be dismissed for
17 plaintiff's failure to prosecute.

18 These findings and recommendations are submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty
20 days after being served with these findings and recommendations, any party may file written
21 objections with the court and serve a copy on all parties. Such a document should be captioned
22 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the
23 objections shall be served and filed within ten days after service of the objections. The parties
24 are advised that failure to file objections within the specified time may waive the right to appeal
25 the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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27 IT IS SO ORDERED.

28 **Dated: January 16, 2009**

/s/ Gary S. Austin

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UNITED STATES MAGISTRATE JUDGE