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

RAYSHON THOMAS,

1:07-cv-01185-AWI-DLB (PC)

Plaintiff,

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

vs.

PEREZ, 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 June 18, 2009, the court processed plaintiff's appeal to the United States Court of Appeals and served the order on plaintiff. On July 6, 2009, the processed appeal served on plaintiff was returned by the U.S. Postal Service as undeliverable.

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, 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

1 consider several factors: (1) the public's interest in expeditious resolution of litigation; (2) the
2 court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
3 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
4 sanctions. Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856 F.2d
5 1439 (9th Cir. 1988). The court finds that the public's interest in expeditiously resolving this
6 litigation and the court's interest in managing the docket weigh in favor of dismissal, as this case
7 has been pending [amount of time]. The court cannot hold this case in abeyance indefinitely
8 based on plaintiff's failure to notify the court of his address. The third factor, risk of prejudice to
9 defendants, also weighs in favor of dismissal, since a presumption of injury arises from the
10 occurrence of unreasonable delay in prosecuting an action. Anderson v. Air West, 542 F.2d 522,
11 524 (9th Cir. 1976). The fourth factor -- public policy favoring disposition of cases on their
12 merits -- is greatly outweighed by the factors in favor of dismissal discussed herein. Finally,
13 given the court's inability to communicate with plaintiff based on plaintiff's failure to keep the
14 court apprised of his current 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 days
20 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 objections
23 shall be served and filed within ten days after service of the objections. The parties are advised
24 that failure to file objections within the specified time may waive the right to appeal the District
25 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

26 IT IS SO ORDERED.

27 **Dated: September 28, 2009**

28 **/s/ Dennis L. Beck**
UNITED STATES MAGISTRATE JUDGE