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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

JAMES EDWARD ROBERTS,

1:08-cv-00162-LJO-GSA-PC

Plaintiff,

FINDINGS AND RECOMMENDATION TO  
DISMISS CASE FOR FAILURE TO OBEY A  
COURT ORDER

v.

CORRECTIONAL OFFICER SOLANO,  
et al.,

OBJECTIONS, IF ANY, DUE IN THIRTY  
DAYS

Defendants.

\_\_\_\_\_  
Plaintiff is a state prisoner proceeding pro se and in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. On May 10, 2010, the court issued an order requiring the parties to this action to file status reports in sixty days. The sixty day period has now expired, and plaintiff has not filed a status report or otherwise responded to the court's order.<sup>1</sup>

Local Rule 11-110 provides that “failure of counsel or of a party to comply with these Local Rules or with any order of the Court may be grounds for the imposition by the Court of any and all sanctions . . . within the inherent power of the Court.” In determining whether to dismiss this action for failure to comply with the directives set forth in its order, “the Court must weigh

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<sup>1</sup>The United States Postal Service returned the order on May 26, 2010, as undeliverable. A notation on the envelope indicates that plaintiff has moved. However, plaintiff has not notified the court of any change in his address. Absent such notice, service at a party’s prior address is fully effective. Local Rule 83-182(f).

1 the following 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 defendants/respondents; (4) the  
3 availability of less drastic alternatives; and (5) the public policy favoring disposition of cases on  
4 their merits." Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet,  
5 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

6 "The public's interest in expeditious resolution of litigation always favors dismissal,"  
7 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the  
8 action has been pending since January 31, 2008. Plaintiff's failure to keep the Court apprised of  
9 his current address may reflect Plaintiff's lack of interest in prosecuting his case. In such an  
10 instance, the Court cannot continue to expend its scarce resources assisting a litigant who has not  
11 taken steps to ensure that he will receive the Court's mail. Thus, both the first and second factors  
12 weigh in favor of dismissal.

13 Turning to the risk of prejudice, "pendency of a lawsuit is not sufficiently prejudicial in  
14 and of itself to warrant dismissal." Id. (citing Yourish at 991). However, "delay inherently  
15 increases the risk that witnesses' memories will fade and evidence will become stale," id., and it  
16 is plaintiff's failure to notify the Court of his current address that is causing delay. Therefore, the  
17 third factor weighs in favor of dismissal.

18 As for the availability of lesser sanctions, at this stage in the proceedings there is little  
19 available to the Court which would constitute a satisfactory lesser sanction while protecting the  
20 Court from further unnecessary expenditure of its scarce resources. Plaintiff is proceeding in  
21 forma pauperis in this action, making monetary sanctions of little use, and given the early stage  
22 of these proceedings, the preclusion of evidence or witnesses is not available. However,  
23 inasmuch as the dismissal being considered in this case is without prejudice, the Court is  
24 stopping short of issuing the harshest possible sanction of dismissal with prejudice.

25 Finally, because public policy favors disposition on the merits, this factor will always  
26 weigh against dismissal. Id. at 643.

27 Accordingly, the court HEREBY RECOMMENDS that this action be dismissed based on  
28 plaintiff's failure to obey the court's order of May 10, 2010.

