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2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE EASTERN DISTRICT OF CALIFORNIA
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9 JUNIOR CLAYTON MENTEER,

10 Plaintiff,

1:08 CV 0217 OWW WMW PC

11 vs.

FINDINGS AND RECOMMENDATION

12 U.S. BUREAU F PRISONS, et al.,
13

14 Defendants.
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16 Plaintiff is a federal prisoner proceeding pro se in a civil rights action.

17 On November 18, 2008, the court sent to plaintiff an order dismissing the
18 complaint and granting Plaintiff leave to file an amended complaint. On December 2, 2008, the
19 order served on plaintiff was returned by the U.S. Postal Service as undeliverable.

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

23
24 If mail directed to a plaintiff in propria persona by the Clerk is
25 returned by the U.S. Postal Service, and if such plaintiff fails to
26 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.

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

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4 In determining whether to dismiss an action for lack of prosecution, the court
5 must consider several factors: (1) the public's interest in expeditious resolution of litigation; (2)
6 the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
7 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
8 sanctions. Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856 F.2d
9 1439 (9th Cir. 1988). The court finds that the public's interest in expeditiously resolving this
10 litigation and the court's interest in managing the docket weigh in favor of dismissal. The court
11 cannot hold this case in abeyance indefinitely based on plaintiff's failure to notify the court of his
12 address. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal, since
13 a presumption of injury arises from the occurrence of unreasonable delay in prosecuting an
14 action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor -- public
15 policy favoring disposition of cases on their merits -- is greatly outweighed by the factors in favor
16 of dismissal discussed herein. Finally, given the court's inability to communicate with plaintiff
17 based on plaintiff's failure to keep the court apprised of his current address, no lesser sanction is
18 feasible.

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

21 These findings and recommendations are submitted to the United States District
22 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
23 thirty days after being served with these findings and recommendations, plaintiff may file written
24 objections with the court. Such a document should be captioned "Objections to Magistrate
25 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections
26 within the specified time may waive the right to appeal the District Court's order. Martinez v.

1 Ylst, 951 F.2d 1153 (9th Cir. 1991).

2 IT IS SO ORDERED.

3 **Dated: February 3, 2009**

/s/ William M. Wunderlich
UNITED STATES MAGISTRATE JUDGE