

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

JUNIOR CLAYTON MENTEE,

Plaintiff, 1:08 CV 0217 OWW WMW PC

vs. FINDINGS AND RECOMMENDATION

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

Defendants.

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

On November 18, 2008, the court sent to plaintiff an order dismissing the complaint and granting Plaintiff leave to file an amended complaint. On December 2, 2008, the order 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.

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.

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

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

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

2 IT IS SO ORDERED.

3 **Dated: February 3, 2009**

4 **/s/ William M. Wunderlich**
5 UNITED STATES MAGISTRATE JUDGE

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