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

FREDERICK DOUGLAS BENNETT, SR., 1:08-cv-0575 LJO YNP [GSA] (PC)

Plaintiff,

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

vs.

WINETT, 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.
section 1983.

On June 9, 2009, the court issued a Notice of Temporary
Assignment Order and served the order on plaintiff. On July 2,
2009, 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:

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

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

13 In determining whether to dismiss an action for lack of
14 prosecution, the court must consider several factors: (1) the
15 public's interest in expeditious resolution of litigation; (2)
16 the court's need to manage its docket; (3) the risk of prejudice
17 to the defendants; (4) the public policy favoring disposition of
18 cases on their merits; and (5) the availability of less drastic
19 sanctions. Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir.
20 1986); Carey v. King, 856 F.2d 1439 (9th Cir. 1988). The court
21 finds that the public's interest in expeditiously resolving this
22 litigation and the court's interest in managing the docket weigh
23 in favor of dismissal, as this case has been pending [amount of
24 time]. The court cannot hold this case in abeyance indefinitely
25 based on plaintiff's failure to notify the court of his address.
26 The third factor, risk of prejudice to defendants, also weighs in
27 favor of dismissal, since a presumption of injury arises from the
28 occurrence of unreasonable delay in prosecuting an action.
Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The
fourth factor -- public policy favoring disposition of cases on
their merits -- is greatly outweighed by the factors in favor of

1 dismissal discussed herein. Finally, given the court's inability
2 to communicate with plaintiff based on plaintiff's failure to
3 keep the court apprised of his current address, no lesser
4 sanction is feasible.

5 **RECOMMENDATION**

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

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

20 IT IS SO ORDERED.

21 **Dated: September 22, 2009**

/s/ Gary S. Austin
22 UNITED STATES MAGISTRATE JUDGE
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