

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

4 If mail directed to a plaintiff in propria persona by the Clerk is
5 returned by the U.S. Postal Service, and if such plaintiff fails to notify
6 the Court and opposing parties within sixty-three (63) days thereafter
of a current address, the Court may dismiss the action without
prejudice for failure to prosecute.

7 In the instant case, more than sixty-three days have passed since Plaintiff's mail was returned
8 and he has not notified the Court of a current address.

9 In determining whether to dismiss an action for lack of prosecution, the court must consider
10 several factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
11 manage its docket; (3) the risk of prejudice to the respondents; (4) the public policy favoring
12 disposition of cases on their merits; and (5) the availability of less drastic alternatives. Henderson v.
13 Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856 F.2d 1439 (9th Cir. 1988). The
14 Court finds that the public's interest in expeditiously resolving this litigation and the Court's interest
15 in managing the docket weigh in favor of dismissal, as this case has been pending since February 10,
16 2009. The Court cannot hold this case in abeyance indefinitely based on Plaintiff's failure to notify
17 the Court of his address. The third factor, risk of prejudice to respondents, also weighs in favor of
18 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay in
19 prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor,
20 public policy favoring disposition of cases on their merits, is greatly outweighed by the factors in
21 favor of dismissal discussed herein. Finally, given the Court's inability to communicate with
22 plaintiff based on plaintiff's failure to keep the court apprised of his current address, no lesser
23 sanction is feasible.

24 **RECOMMENDATIONS**

25 Based on the foregoing, the court HEREBY RECOMMENDS that:

- 26 1. This action be DISMISSED without prejudice for Plaintiff's failure to prosecute; and
- 27 2. The Clerk of Court be DIRECTED to close this action.

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1 These Findings and Recommendations are submitted to the Honorable Lawrence J. O’Neill,
2 United States District Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule
3 304 of the Local Rules of Practice for the United States District Court, Eastern District of California.
4 Within thirty (30) days after being served with a copy, Plaintiff may file written objections with the
5 court and serve a copy on all parties. Such a document should be captioned “Objections to
6 Magistrate Judge’s Findings and Recommendations.” The Court will then review the Magistrate
7 Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). Plaintiff is advised that failure to file
8 objections within the specified time may waive the right to appeal the District Court’s order.
9 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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IT IS SO ORDERED.

Dated: August 23, 2011

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE