

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

JOSE L. MADRIGAL,

Plaintiff, 1:09 CV 00531 MJS (PC)

vs. ORDER DISMISSING ACTION

J. H ARTLEY,

Defendant.

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Plaintiff has consented to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c)(1).

On January 29, 2010, the court sent to plaintiff an order dismissing the complaint with leave to file an amended complaint. On January 23, 2010, 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:

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

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

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

23      //

24      //

25      //

Accordingly, the court HEREBY ORDERS that this action be dismissed without prejudice.

IT IS SO ORDERED.

Dated: May 4, 2010

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE