

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE EASTERN DISTRICT OF CALIFORNIA
4
5
6
7
8

9 JOSE L. MADRIGAL,

10 Plaintiff,

1:09 CV 00531 MJS (PC)

11 vs.

ORDER DISMISSING ACTION

12 J. H ARTLEY,

13 Defendant.
14
15

16 Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42
17 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C.
18 § 1915. Plaintiff has consented to magistrate judge jurisdiction pursuant to 28 U.S.C. §
19 636(c)(1).
20

21 On January 29, 2010, the court sent to plaintiff an order dismissing the complaint
22 with leave to file an amended complaint. On January 23, 2010, the order served on plaintiff
23 was returned by the U.S. Postal Service as undeliverable.
24

25 Pursuant to Local Rule 83-183(b), a party appearing in propria persona is required
26 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
thereafter of a current address, the Court may dismiss the action
without prejudice for failure to prosecute.

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

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

21 //

22 //

23 //

24 //

25 //

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

3
4 IT IS SO ORDERED.

5 **Dated: May 4, 2010**

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE