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

FREDERICK L. PARKER,

1:09-cv-00897-YNP [GSA] (PC)

Plaintiff,

vs.

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

JOE CURRY,

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 July 7, 2009, the court issued a second Order re Consent or Request for Reassignment and served the order on plaintiff. On August 10, 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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1 If mail directed to a plaintiff in propria
2 persona by the Clerk is returned by the U.S.
3 Postal Service, and if such plaintiff fails
4 to notify the Court and opposing parties
5 within sixty (60) days thereafter of a
6 current address, the Court may dismiss the
7 action without prejudice for failure to
8 prosecute.

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

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

1 to communicate with plaintiff based on plaintiff's failure to
2 keep the court apprised of his current address, no lesser
3 sanction is feasible.

4 **RECOMMENDATION**

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

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

19 IT IS SO ORDERED.

20 Dated: November 3, 2009

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

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