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

ROBERT VINCENT MENDOZA,

1:09-cv-0972-BAK-SMS (HC)

Petitioner,

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

vs.

CSP-SACRAMENTO,

ORDER DIRECTING OBJECTIONS TO BE  
FILED WITHIN TWENTY DAYS

Respondent.

ORDER DIRECTING CLERK OF COURT  
TO ASSIGN DISTRICT JUDGE TO CASE

\_\_\_\_\_ /

Petitioner is a state prisoner proceeding pro se and in  
forma pauperis in a habeas action pursuant to 28 U.S.C. § 2254.

On June 17, 2009, the court issued an Order and served  
the Order on Petitioner. On June 30, 2009, the Order served on  
Petitioner 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,

1 in pertinent part as follows:

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, more than sixty days have passed since  
11 Petitioner's mail was returned and he has not notified the court  
12 of a current 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 (9<sup>th</sup> 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 since May  
24 26, 2009. The Court cannot hold this case in abeyance  
25 indefinitely based on Petitioner's failure to notify the Court of  
26 his address. The third factor, risk of prejudice to defendants,  
27 also weighs in favor of dismissal, since a presumption of injury  
28 arises from the occurrence of unreasonable delay in prosecuting  
an action. Anderson v. Air West, 542 F.2d 522, 524 (9<sup>th</sup> Cir.  
1976). The fourth factor -- public policy favoring disposition  
of cases on their merits -- is greatly outweighed by the factors

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

5 **ORDER**

6 The Court HEREBY DIRECTS the Clerk of the Court to assign a  
7 United States District Judge to this case.

8 **RECOMMENDATION**

9 Accordingly, the Court HEREBY RECOMMENDS that this  
10 action be dismissed for Petitioner's failure to prosecute.

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

23  
24 IT IS SO ORDERED.

25 **Dated: October 5, 2009**

**/s/ Sandra M. Snyder**  
UNITED STATES MAGISTRATE JUDGE