

1 On February 23, 2010, the Court re-served the order after the address was updated to
2 reflect “c/o Alberta Carter.” On March 29, 2010, Plaintiff filed a motion to proceed in forma
3 pauperis.

4 On April 8, 2010, the Court ordered Plaintiff to submit a status report because it was
5 unclear whether Plaintiff was incarcerated.

6 On April 26, 2010, the order was returned by the U. S. Postal Service as “Undeliverable,
7 RTS; No Such Street; Unable to Forward.”

8 On April 29, 2010, the Court re-served the order on Plaintiff at the Inyo County Jail,
9 which was the address he listed on the March 29, 2010, order.

10 On May 13, 2010, the order was returned by the U. S. Postal Service. The envelope
11 stated, “Undeliverable, Not in Custody.”

12 The Court therefore attempted service at all addresses provided by Plaintiff.

13 DISCUSSION

14 Pursuant to Local Rule 183(b), a party appearing in propria persona is required to keep
15 the Court advised of his or her current address at all times. Local Rule 183(b) provides, in
16 pertinent part:

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

21 In the instant case, over 63 days have passed since Plaintiff’s mail was returned and he
22 has not notified the Court of a current address.

23 In determining whether to dismiss an action for lack of prosecution, the Court must
24 consider several factors: (1) the public’s interest in expeditious resolution of litigation; (2) the
25 court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
26 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
27 alternatives. Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856
28 F.2d 1439 (9th Cir. 1988).

1 The Court finds that the public's interest in expeditiously resolving this litigation and the
2 Court's interest in managing the docket weigh in favor of dismissal, as this case has been
3 pending since November 2, 2009. The Court cannot hold this case in abeyance indefinitely based
4 on Plaintiff's failure to notify the Court of his address. The third factor, risk of prejudice to
5 defendants, also weighs in favor of dismissal, since a presumption of injury arises from the
6 occurrence of unreasonable delay in prosecuting an action. Anderson v. Air West, 542 F.2d 522,
7 524 (9th Cir. 1976). The fourth factor -- public policy favoring disposition of cases on their
8 merits -- is greatly outweighed by the factors in favor of dismissal discussed herein. Finally,
9 given the Court's inability to communicate with Plaintiff based on his failure to keep the Court
10 advised of his current address, no lesser sanction is feasible.

11 RECOMMENDATION

12 Accordingly, the Court HEREBY RECOMMENDS that this action be dismissed for
13 Plaintiff's failure to prosecute.

14 This Findings and Recommendation is submitted to the United States District Court
15 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304
16 of the Local Rules of Practice for the United States District Court, Eastern District of California.
17 Within thirty (30) days after being served with a copy, any party may file written objections with
18 the Court and serve a copy on all parties. Such a document should be captioned "Objections to
19 Magistrate Judge's Findings and Recommendation." A response to the objections, if any, shall
20 be filed within fourteen (14) days after service of the objections.

21 The Court will then review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636
22 (b)(1)(C). The parties are advised that failure to file objections within the specified time may
23 waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.
24 1991).

25 IT IS SO ORDERED.

26 **Dated: July 28, 2010**

27 **/s/ Dennis L. Beck**
28 UNITED STATES MAGISTRATE JUDGE