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

DENNIS ELIJAH JEMISON,

1:09-cv-01978-LJO-GSA (PC)

Plaintiff,

vs.

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

NAVARO, et al.,

OBJECTIONS, IF ANY, DUE IN 30 DAYS

Defendants.

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Plaintiff is a prisoner proceeding pro se and in forma pauperis with this civil rights action pursuant to Bivens vs. Six Unknown Agents, 403 U.S. 388 (1971).

On April 15, 2010, the court issued an order denying plaintiff's motion to open discovery and for appointment of counsel ("Order") and served it on plaintiff at his last known address according to the court's record. (Doc. 12.) The United States Postal Service returned the Order on April 26, 2010 as undeliverable. Plaintiff has not notified the court of any change in his address. Absent such notice, service at a party's prior address is fully effective. Local Rule 182(f).

Pursuant to Local Rule 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 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-three (63) days  
thereafter of a current address, the Court may dismiss the action  
without prejudice for failure to prosecute.

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

6 In determining whether to dismiss an action for lack of prosecution, the court must  
7 consider several factors: (1) the public's interest in expeditious resolution of litigation; (2) the  
8 court's need to manage its docket; (3) the risk of prejudice to the respondents; (4) the public  
9 policy favoring disposition of cases on their merits; and (5) the availability of less drastic  
10 alternatives. Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856  
11 F.2d 1439 (9th Cir. 1988). The court finds that the public's interest in expeditiously resolving  
12 this litigation and the court's interest in managing the docket weigh in favor of dismissal, as this  
13 case has been pending since November 3, 2009. The court cannot hold this case in abeyance  
14 indefinitely based on plaintiff's failure to notify the court of his address. The third factor, risk of  
15 prejudice to respondents, also weighs in favor of dismissal, since a presumption of injury arises  
16 from the occurrence of unreasonable delay in prosecuting an action. Anderson v. Air West, 542  
17 F.2d 522, 524 (9th Cir. 1976). The fourth factor, public policy favoring disposition of cases on  
18 their merits, is greatly outweighed by the factors in favor of dismissal discussed herein. Finally,  
19 given the court's inability to communicate with plaintiff based on plaintiff's failure to keep the  
20 court apprised of his current address, no lesser sanction is feasible.

### 21 **RECOMMENDATIONS**

22 Based on the foregoing, the court HEREBY RECOMMENDS that this action be  
23 DISMISSED without prejudice for plaintiff's failure to prosecute.

24 These Findings and Recommendations are submitted to the Honorable Lawrence J.  
25 O'Neill, United States District Court Judge, pursuant to the provisions of 28 U.S.C. § 636  
26 (b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court,  
27 Eastern District of California. Within thirty (30) days after being served with a copy, any party  
28 may file written objections with the court and serve a copy on all parties. Such a document

1 should be captioned "Objections to Magistrate Judge's Findings and Recommendations."  
2 Replies to the objections shall be served and filed within ten (10) court days (plus three days if  
3 served by mail) after service of the objections. The Court will then review the Magistrate  
4 Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file  
5 objections within the specified time may waive the right to appeal the District Court's order.  
6 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

7 IT IS SO ORDERED.

8 **Dated: July 16, 2010**

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE

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