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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

STEPHEN GARCIA,	)	1:10-cv-00489 MJS HC
	)	
Petitioner,	)	ORDER DISMISSING PETITION DUE TO
	)	PETITIONER'S FAILURE TO FOLLOW A
v.	)	COURT ORDER
	)	
	)	[Doc. 7]
COJO MOORE & ASSOC.,	)	
	)	
Respondent.	)	

Petitioner is proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On March 18, 2010, Petitioner filed a petition for writ of habeas corpus. On July 19, 2010, the Court issued an order to show cause why the petition should not be dismissed for Petitioner's failure to exhaust state remedies. (Order to Show Cause, ECF No. 6.) On August 3, 2010, the order served on Petitioner was returned by the U.S. Postal Service as undeliverable. On August 5, 2010, the Court issued an order to show cause why the petition should not be dismissed for Petitioner's failure to Prosecute. (Order to Show Cause Regarding Failure to Prosecute, ECF No. 6.) The order required Petitioner to report his current address to the Court within sixty-three (63) of the service of the order. (Id.) On August 19, 2010, the order served on Petitioner was returned by the U.S. Postal Service as undeliverable.

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1 Pursuant to Local Rule 183(b), a party appearing in propria persona is required to keep  
2 the court apprised of his or her current address at all times. Local Rule 183(b) provides, in  
3 pertinent part:

4 If mail directed to a plaintiff in propria persona by the Clerk is  
5 returned by the U.S. Postal Service, and if such plaintiff fails to  
6 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.

7 In the instant case, over sixty-three (63) days have passed since Petitioner's mail was  
8 returned and he has not notified the court of a current address.

9 In determining whether to dismiss an action for lack of prosecution, the court must  
10 consider several factors: (1) the public's interest in expeditious resolution of litigation; (2) the  
11 court's need to manage its docket; (3) the risk of prejudice to the respondents; (4) the public  
12 policy favoring disposition of cases on their merits; and (5) the availability of less drastic  
13 alternatives. Henderson v. Duncan, 779 F.2d 1421, 1423-24 (9th Cir. 1986); Carey v. King,  
14 856 F.2d 1439, 1440-41 (9th Cir. 1988). The Court finds that the public's interest in  
15 expeditiously resolving this litigation and the Court's interest in managing the docket weigh in  
16 favor of dismissal as this case has been pending since March 18, 2010. The Court cannot hold  
17 this case in abeyance indefinitely based on Petitioner's failure to notify the Court of his  
18 address. The third factor, risk of prejudice to respondents, also weighs in favor of dismissal,  
19 since a presumption of injury arises from the occurrence of unreasonable delay in prosecuting  
20 an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor, public  
21 policy favoring disposition of cases on their merits, is greatly outweighed by the factors in favor  
22 of dismissal discussed herein. Finally, given the Court's inability to communicate with  
23 Petitioner based on Petitioner's failure to keep the Court apprised of his current address, no  
24 lesser sanction is feasible.

25 Accordingly, the Court hereby orders that this action be dismissed without prejudice for  
26 Petitioner's failure to prosecute.

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**ORDER**

Accordingly, IT IS HEREBY ORDERED that:

- 1. The Petition for Writ of Habeas Corpus is DISMISSED without prejudice; and
- 2. The Clerk of Court is DIRECTED to enter judgment.

IT IS SO ORDERED.

Dated: October 22, 2010

*/s/ Michael J. Seng*  
UNITED STATES MAGISTRATE JUDGE