

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

DOUGLAS M. OBUJEN,

1:10-cv-00691-AWI-DLB (PC)

Plaintiff,

v.

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

CDC AVENAL STATE PRISON, et al.,

Defendants.

OBJECTIONS, IF ANY, DUE WITHIN
TWENTY DAYS

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 April 21, 2010, the court issued an order granting the motion to proceed in forma pauperis and served the order on plaintiff. On May 10, 2010 and May 21, 2010, the order served on plaintiff was returned by the U.S. Postal Service as undeliverable.

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:

If mail directed to a plaintiff in propria persona by the Clerk is returned by the U.S. Postal Service, and if such plaintiff fails to notify the Court and opposing parties within sixty (60) days thereafter of a current address, the Court may dismiss the action without prejudice for failure to prosecute.

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

In determining whether to dismiss an action for lack of prosecution, the court must consider several factors: (1) the public's interest in expeditious resolution of litigation; (2) the

1 court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
2 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
3 sanctions. *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986); *see Carey v. King*, 856
4 F.2d 1439 (9th Cir. 1988). The court finds that the public's interest in expeditiously resolving
5 this litigation and the court's interest in managing the docket weigh in favor of dismissal, as this
6 case has been pending [amount of time]. The court cannot hold this case in abeyance indefinitely
7 based on plaintiff's failure to notify the court of his address. The third factor, risk of prejudice to
8 defendants, also weighs in favor of dismissal, since a presumption of injury arises from the
9 occurrence of unreasonable delay in prosecuting an action. *Anderson v. Air West*, 542 F.2d 522,
10 524 (9th Cir. 1976). The fourth factor -- public policy favoring disposition of cases on their
11 merits -- is greatly outweighed by the factors in favor of dismissal discussed herein. Finally,
12 given the court's inability to communicate with plaintiff based on plaintiff's failure to keep the
13 court apprised of his current address, no lesser sanction is feasible.

14 **RECOMMENDATION**

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

17 These findings and recommendations are submitted to the United States District Judge
18 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within twenty
19 days after being served with these findings and recommendations, any party may file written
20 objections with the court and serve a copy on all parties. Such a document should be captioned
21 "Objections to Magistrate Judge's Findings and Recommendations." The parties are advised that
22 failure to file objections within the specified time may waive the right to appeal the District
23 Court's order. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991).

24 IT IS SO ORDERED.

25 **Dated: August 4, 2010**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE