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

GLEN PAUL DOMINGUEZ,)
)
Plaintiff,)
)
vs.)
)
STATE OF CALIFORNIA)
DEPARTMENT OF CORRECTIONS,)
)
Defendant.)
_____)

1:10-cv-02146-LJO-SMS
**ORDER TO SHOW CAUSE WHY CASE
SHOULD NOT BE DISMISSED FOR
FAILURE TO PROSECUTE**
Date: 2/25/11
Time: 9:30 a.m.
Ctrm: 7

This matter came on regularly for a Mandatory Scheduling Conference on February 10, 2011 at 9:00 a.m. before the Honorable Sandra M. Snyder, United States Magistrate Judge, pursuant to the Order Setting Mandatory Scheduling Conference, filed December 2, 2010, with which pro se plaintiff was served by mail. On December 3, 2010, mail was returned to the court as undeliverable - not deliverable as addressed - unable to forward. As a result, plaintiff did not appear on February 10, 2011, or otherwise contact the court.

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1 A pro se party has an affirmative duty to keep the Court and
2 opposing parties apprised of a current address. If plaintiff moves
3 and fails to file a notice of change of address, service of court
4 orders at plaintiff's prior address shall constitute effective
5 notice. See Local Rule 182(f). If mail directed to plaintiff is
6 returned by the United States Postal Service as undeliverable, the
7 Court will not attempt to re-mail it. If plaintiff's address is
8 not updated, in writing, within sixty-three (63) days of mail being
9 returned, the action will be dismissed for failure to prosecute.
10 See Local Rule 183(b).

11 Therefore, a review of the instant action indicates that
12 plaintiff has not diligently prosecuted this case, has not served
13 the defendant, and has not filed a notice of change of address as
14 required by Local Rules 182(f) and/or 183(b) .

15 The court possesses the discretionary authority to dismiss an
16 action based on plaintiff's failure to prosecute diligently. Fed.
17 R. Civ. P. 41(b); Schwarzer, Tashima & Wagstaffe, Fed. Civ. Proc.
18 Before Trial ¶ 16:431 (1997). Unreasonable delay by plaintiff is
19 sufficient to justify dismissal, even in the absence of actual
20 prejudice to the defendant (Moore v. Telfon Communications Corp.,
21 589 F.2d 959, 967-68 (9th Cir. 1978)) since a presumption of injury
22 arises from the occurrence of unreasonable delay. Fidelity
23 Philadelphia Trust Co. v. Pioche Mines Consol., Inc., 587 F.2d 27,
24 29 (9th Cir. 1978). Plaintiff then has the burden of showing
25 justification for the delay and, in the absence of such showing,
26 the case is properly dismissed for failure to prosecute. Nealey v.
27 Transportation Maritima Mexicana, S.A., 662 F.2d 1275 (9th Cir.
28 1980).

1 **THEREFORE, IT IS HEREBY ORDERED:**

2 1. That this matter be set for hearing on February 25, 2011
3 at 9:30 a.m. in Courtroom No. 7 before the Honorable Sandra M.
4 Snyder, United States Magistrate Judge, for consideration of
5 dismissal for plaintiff's failure to prosecute.

6 2. If plaintiff has any reasons why this action should not
7 be dismissed, they shall be submitted by sworn declaration of facts
8 on or before **February 21, 2011**, to which a supporting memorandum of
9 law may be appended, to include:

10 (A) an explanation of the lack of activity in this case;
11 and,

12 (B) shall list each specific step plaintiff plans to
13 take to prepare this case for trial.

14 Plaintiff is advised that failure to comply with and/or
15 respond to this order will result in a recommendation to the
16 District Judge that this action be dismissed.

17
18 IT IS SO ORDERED.

19 **Dated:** February 10, 2011

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE

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