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

CHU HYUN CHO,  
Plaintiffs,  
v.  
SIX UNKNOWN NAMES AGENTS, et. al,  
Defendants.

Case No. 1:12-cv-00338 JLT (PC)  
ORDER DIRECTING THAT THIS MATTER  
BE ASSIGNED TO A DISTRICT JUDGE  
FINDINGS AND RECOMMENDATIONS TO  
DISMISS THE MATTER FOR FAILING TO  
COMPLY WITH THE COURT'S ORDERS  
AND FAILING TO PROSECUTE THE  
ACTION

On March 2, 2012, Plaintiff filed this action. (Doc. 1) However, on March 19, 2012, the Court ordered the complaint stricken because it was not signed and it set forth no intelligible claims for relief. (Doc. 3) The order granted Plaintiff 30 days to file a new complaint. *Id.*, at 2. On March 26, 2012, the order was returned as undeliverable. The Clerk of the Court re-served the order and other documents to Plaintiff at an address on Big Spring, TX. Since this time, Plaintiff has neither filed a new complaint nor filed notice of change of address.

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.

Here, sixty days have passed since Plaintiff's mail was returned and he has not notified the court

1 of a current address. Moreover, more than thirty days has passed since Petitioner's amended  
2 petition was due pursuant to the Court's May 19, 2012 order.

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

### 18 **ORDER**

19 Based upon the foregoing, the Court DIRECTS the Clerk of the Court to assign this matter  
20 to a District Judge.

### 21 **RECOMMENDATION**

22 Accordingly, the Court HEREBY RECOMMENDS that this action be dismissed for  
23 petitioner's failure to prosecute.

24 These findings and recommendations are submitted to the United States District Judge  
25 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within 14 days  
26 after being served with these findings and recommendations, any party may file written  
27 objections with the court and serve a copy on all parties. Such a document should be captioned  
28 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections

1 shall be served and filed within ten days after service of the objections. The parties are advised  
2 that failure to file objections within the specified time may waive the right to appeal the District  
3 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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IT IS SO ORDERED.

Dated: June 4, 2012

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE