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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 OTONIEL TYLER PENNINGS,

12 Plaintiff,

13 v.

14 R. BROOMFIELD, et al.,

15 Defendant.  
16

Case No. 1:15-cv-01183-AWI-EPG

FINDINGS AND RECOMMENDATIONS  
THAT THIS CASE BE DISMISSED FOR  
PLAINTIFF'S FAILURE TO COMPLY  
WITH A COURT ORDER AND FAILURE  
TO PROSECUTE

OBJECTIONS, IF ANY, DUE WITHIN 21  
DAYS

17 Otoniel Tyler Pennings ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma*  
18 *pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on  
19 July 29, 2015. (ECF No. 1.)

20 **I. BACKGROUND**

21 On December 15, 2017 and February 5, 2018, the Court mailed two Court Orders to  
22 Plaintiff at his address on the docket. (ECF Nos. 38, 39.) Those Orders were returned as  
23 undeliverable (Paroled) shortly after they were mailed.

24 A *pro se* plaintiff must keep the Court and opposing parties informed of the party's  
25 correct current address. Local Rule 182(f). If a party moves to a different address without  
26 filing and serving a notice of change of address, documents served at a party's old address of  
27 record shall be deemed received even if not actually received. *Id.*

28 If mail directed to a *pro se* plaintiff at the address of record is returned by the United

1 States Postal Service as undeliverable, the order will not be re-served a second time absent a  
2 notice of change of address. If a *pro se* plaintiff's address is not updated within sixty-three  
3 (63) days of mail being returned as undeliverable, the case will be dismissed for failure to  
4 prosecute. Local Rule 183(b).

5 Plaintiff was informed of these requirements in the Court's July 30, 2015 Order. (ECF  
6 No. 3 at 5, discussing Local Rules 182 and 183 in a section titled "Current Address Required").

## 7 **II. ANALYSIS**

8 Plaintiff failed to keep the Court informed of his current address, as required by Local  
9 Rules 182 and 183. Accordingly, the Court will recommend that Plaintiff's case be dismissed  
10 without prejudice for failure to comply with a court order and failure to prosecute.

11 "In determining whether to dismiss a[n] [action] for failure to prosecute or failure to  
12 comply with a court order, the Court must weigh the following factors: (1) the public's interest  
13 in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of  
14 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the  
15 public policy favoring disposition of cases on their merits." *Pagtalunan v. Galaza*, 291 F.3d  
16 639, 642 (9th Cir. 2002) (citing *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

17 "The public's interest in expeditious resolution of litigation always favors dismissal."  
18 *Id.* (quoting *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)). Accordingly,  
19 this factor weighs in favor of dismissal.

20 Turning to the risk of prejudice, "pendency of a lawsuit is not sufficiently prejudicial in  
21 and of itself to warrant dismissal." *Id.* at 642 (citing *Yourish*, 191 F.3d at 991). However,  
22 "delay inherently increases the risk that witnesses' memories will fade and evidence will  
23 become stale," *Id.* at 643, and it is Plaintiff's failure to maintain a current mailing address that is  
24 causing delay. The case is now stalled as a result. Therefore, the third factor weighs in favor  
25 of dismissal.

26 As for the availability of lesser sanctions, at this stage in the proceedings there is little  
27 available to the Court that would constitute a satisfactory lesser sanction while protecting the  
28 Court from further unnecessary expenditure of its scarce resources. Monetary sanctions are of

1 little use, considering Plaintiff's incarceration and *in forma pauperis* status, and given the stage  
2 of these proceedings, the preclusion of evidence or witnesses is not available. Additionally,  
3 because the dismissal being considered in this case is without prejudice, the Court is stopping  
4 short of using the harshest possible sanction of dismissal with prejudice.

5 Finally, because public policy favors disposition on the merits, this factor weighs  
6 against dismissal. *Id.*

7 After weighing the factors, including the Court's need to manage its docket, the Court  
8 finds that dismissal is appropriate.

9 **III. RECOMMENDATION**

10 Accordingly, the Court HEREBY RECOMMENDS that:

- 11 1. This action be dismissed without prejudice, based on Plaintiff's failure to  
12 prosecute this case and failure to maintain a current mailing address; and  
13 2. The Clerk of Court be directed to close this case.

14 These findings and recommendations are submitted to the district judge assigned to the  
15 case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within twenty-one days after  
16 being served with these findings and recommendations, Plaintiff may file written objections  
17 with the court. Such a document should be captioned "Objections to Magistrate Judge's  
18 Findings and Recommendations." Plaintiff is advised that failure to file objections within the  
19 specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d  
20 834, 839 (9th Cir. 2014) (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

21 IT IS SO ORDERED.

22  
23 Dated: March 16, 2018

24 /s/ Eric P. Gray  
25 UNITED STATES MAGISTRATE JUDGE  
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