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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

KENNETH TARALDSEN,)	
)	
Plaintiff,)	
)	CIV 08-01855 PHX FJM MEA
vs.)	
)	REPORT AND RECOMMENDATION
ALEXIS J. CAMBEROS,)	FOR DISMISSAL WITHOUT PREJUDICE
JOE ARPAIO,)	
)	
Defendants.)	
)	

15 TO THE HONORABLE FREDERICK J. MARTONE:

16 Plaintiff filed his complaint on October 8, 2008. On
17 October 27, 2008, the Court ordered Plaintiff to complete and
18 return a service packet for Defendant to the Court by November
19 17, 2008. That order warned Plaintiff that his failure to
20 timely comply with the provisions of the order would result in
21 the dismissal of the complaint pursuant to Rule 41(b), Federal
22 Rules of Civil Procedure.

23 Plaintiff was further warned that his failure to
24 acquire a waiver of service from Defendants or to complete
25 service of process on Defendants within 120 days of the date the
26 complaint was filed, that is, by February 4, 2009, would result
27 in the dismissal of the complaint pursuant to Rule 4(m), Federal
28 Rules of Civil Procedure, and Rule 16.2(b)(2)(B), of the United
States District Court for the District of Arizona Local Rules of

1 Civil Procedure. The civil docket in this matter indicates that
2 Plaintiff has failed to return service packets to the Court, or
3 acquire a waiver of service from Defendants or to complete
4 service of process on Defendants.

5 On February 6, 2009, the Court allowed Plaintiff until
6 February 27, 2009, to show cause why this case should not be
7 dismissed for Plaintiff's failure to comply with the Court's
8 order of October 27, 2008, and Plaintiff's failure to effect
9 service of process on Defendants as required by the Court's
10 order of October 27, 2008, and Rule 4, Federal Rules of Civil
11 Procedure. However, the Order to Show Cause sent to Plaintiff
12 at his last known address was returned as undeliverable.

13 Rule 3.4, Local Rules of Civil Procedure for the
14 United States District Court for the District of Arizona
15 requires prisoner-litigants to comply with instructions attached
16 to the Court-approved complaint form for use in section 1983
17 actions. Those instructions provide: "You must immediately
18 notify the clerk ... in writing of any change in your mailing
19 address. Failure to notify the court of any change in your
20 mailing address may result in the dismissal of your case."

21 Plaintiff has a general duty to prosecute this case.
22 Fidelity Phila. Trust Co. v. Pioche Mines Consol., Inc., 587
23 F.2d 27, 29 (9th Cir. 1978). In this regard, it is the duty of
24 a plaintiff who has filed a *pro se* action to keep the Court
25 apprised of his current address and to comply with the Court's
26 orders in a timely fashion. This Court does not have an
27 affirmative obligation to locate Plaintiff. "A party, not the
28 district court, bears the burden of keeping the court apprised

1 of any changes in his mailing address." Carey v. King, 856 F.2d
2 1439, 1441 (9th Cir. 1988). Plaintiff's failure to keep the
3 Court informed of his new address constitutes failure to
4 prosecute.

5 Rule 41(b) of the Federal Rules of Civil Procedure
6 provides that "[f]or failure of the plaintiff to prosecute or to
7 comply with these rules or any order of court, a defendant may
8 move for dismissal of an action." In Link v. Wabash Railroad
9 Co., 370 U.S. 626, 629-31 (1962), the Supreme Court recognized
10 that a federal district court has the inherent power to dismiss
11 a case *sua sponte* for failure to prosecute, even though the
12 language of Rule 41(b) of the Federal Rules of Civil Procedure
13 appears to require a motion from a party. Moreover, in
14 appropriate circumstances, the Court may dismiss a complaint for
15 failure to prosecute even without notice or hearing. Id. at
16 633.

17 In determining whether Plaintiff's failure to
18 prosecute warrants dismissal of the case, the Court must weigh
19 the following five factors: "(1) the public's interest in
20 expeditious resolution of litigation; (2) the court's need to
21 manage its docket; (3) the risk of prejudice to the defendants;
22 (4) the public policy favoring disposition of cases on their
23 merits; and (5) the availability of less drastic sanctions."
24 Carey, 856 F.2d at 1440 (quoting Henderson v. Duncan, 779 F.2d
25 1421, 1423 (9th Cir. 1986)). "The first two of these factors
26 favor the imposition of sanctions in most cases, while the
27 fourth factor cuts against a default or dismissal sanction.
28 Thus the key factors are prejudice and availability of lesser

1 sanctions." Wanderer v. Johnson, 910 F.2d 652, 656 (9th Cir.
2 1990).


3 Here, the first, second, and third factors favor
4 dismissal of this case. Plaintiff's failure to keep the Court
5 informed of his address prevents the case from proceeding in the
6 foreseeable future. The fourth factor, as always, weighs
7 against dismissal. The fifth factor requires the Court to
8 consider whether a less drastic alternative is available.
9 Without Plaintiff's current address, however, certain
10 alternatives are bound to be futile. Here, as in Carey, "[a]n
11 order to show cause why dismissal is not warranted or an order
12 imposing sanctions would only find itself taking a round trip
13 tour through the United States mail." 856 F.2d at 1441.

14 The Court finds that only one less drastic sanction
15 is realistically available. Rule 41(b) provides that a
16 dismissal for failure to prosecute operates as an adjudication
17 upon the merits "[u]nless the court in its order for dismissal
18 otherwise specifies." In the instant case, the Court concludes
19 that a dismissal with prejudice would be unnecessarily harsh.

20 **IT IS THEREFORE RECOMMENDED** that, pursuant to Rule
21 41(b) and Rule 4(m), Federal Rules of Civil Procedure, this
22 action be dismissed without prejudice.

23 DATED this 2nd day of March, 2009.

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Mark E. Aspey
United States Magistrate Judge