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 7 **UNITED STATES DISTRICT COURT**  
 8 **DISTRICT OF ARIZONA**

9 Petro N. Basargin,

10 Plaintiff,

11 v.

12 D. Goss,

13 Defendant.

NO. CIV 05-3350-PHX-EHC (CRP)

**DEFENDANT GOSS' RULE 41(b)  
 MOTION TO DISMISS FOR  
 FAILURE TO PROSECUTE AND  
 REQUEST TO VACATE JUNE 22,  
 2007 DEADLINE FOR FILING  
 JOINT PROPOSED PRETRIAL  
 ORDER AND MOTIONS IN  
 LIMINE**

14 Defendant Goss, through counsel and pursuant to Federal Rule of Civil  
 15 Procedure 41(b), moves to dismiss Plaintiff's claim for failure to prosecute.

16 On December 6, 2005, the Court issued an order stating that:

17 At all times during the pendency of this action, Plaintiff shall  
 18 immediately advise the Court of any change of address and its  
 19 effective date. . . Failure to file a Notice of Change of Address  
 20 may result in the dismissal of the action for failure to  
 21 prosecute pursuant to Rule 41(b) of the Federal Rules of Civil  
 22 Procedure.

23 On May 23, 2007, Defendant received an Order directing the Joint Proposed  
 24 Pretrial Order and Motions in Limine to be filed on June 22, 2007. In preparation for  
 25 submitting these items, Defendant sent a letter to Plaintiff's last known address<sup>1</sup>  
 26 requesting his portions no later than June 18, 2007. *See* Exhibit 1. In addition, Defendant  
 attempted to set-up a conference call with Mr. Basargin for June 21, 2007. *See* Exhibit 2.

<sup>1</sup> As of January 2007, Plaintiff was in the custody of the Alaska Department of Corrections.

1           On June 18, 2007, Defendant was notified by the Alaska Department of  
2 Corrections that Plaintiff is no longer in the custody of the Alaska Department of  
3 Corrections. Defendant's counsel spoke with Sergeant Bruning at Plaintiff's last known  
4 address, the Spring Creek Correctional Center, and was informed that Plaintiff was  
5 released from custody on February 3, 2007.

6           Federal Rule of Civil Procedure 41(b) provides that a defendant may move  
7 for a dismissal of an action for "failure of the plaintiff to prosecute or to comply with  
8 these rules or any order of court." Here, Plaintiff has failed to comply with this Court's  
9 Order directing him to keep the Court apprised of any address change. Plaintiff has failed,  
10 for nearly **six** months, to notify the Court of his change of address.

11           Plaintiff's failure has resulted in prejudice to the Defendant. Without  
12 Plaintiff's proposed portions of the Joint Proposed Pretrial Order, Defendant is unable to  
13 prepare the appropriate Motions in Limine. In addition, without means of contacting  
14 Plaintiff, it is impossible to submit a Joint Proposed Pretrial Order.

15           Because Plaintiff has failed to comply with this Court's Order, Defendant  
16 requests that his case be dismissed for failure to prosecute. Further, Defendant requests  
17 that the deadline for submission of the Joint Proposed Pretrial Order and Motions in  
18 Limine be vacated, until such time as the Court makes a determination on Defendant's  
19 Motion to Dismiss for Failure to Prosecute.

20                       RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of June 2007.

21   JONES, SKELTON & HOCHULI, P.L.C.

22   By s/Christina G. Retts

23   Daniel P. Struck  
24   Christina Retts  
25   2901 North Central Avenue, Suite 800  
26   Phoenix, Arizona 85012  
   *Attorneys for Defendant Goss*

ELECTRONICALLY filed this 19<sup>th</sup> day of June 2007

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COPY of the foregoing mailed this same date to  
Plaintiff's last known address:

Petro N. Basargin, #471978  
LEGAL MAIL  
Spring Creek Correctional Center  
P.O. Box 5001  
Seward, Alaska 99664  
Plaintiff *Pro Per*

s/Christina G. Retts