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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Anthony Aaron Grady,

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No. CV-09-1829-PHX-MHM (LOA)

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Plaintiff,

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ORDER

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vs.

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Joseph M. Arpaio, et al,

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Defendant.

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This matter arises on the Court’s review of the file. Plaintiff commenced this action on
September 1, 2009. (docket # 1) On October 30, 2009, the Court dismissed the Complaint for
failure to state a claim, and granted Plaintiff leave to file an Amended Complaint. (docket #
4) On November 10, 2009, Plaintiff filed an Amended Complaint. (docket # 5) On December
23, 2009, the Court granted Plaintiff *in forma pauperis* status and ordered service on Defendant
Arpaio. (docket # 6) The December 23, 2009 Order also directed Plaintiff to notify the Court
in writing of any change in his address and warned Plaintiff that failure to do so could result in
dismissal of this action. (*Id.*) Local Rule of Civil Procedure 83.3(d) also requires Plaintiff to
notify the Court in writing of any change in address “within seven (7) days after the effective
date of the change.” *Id.* On January 4, 2010, the Court received returned mail addressed to
Plaintiff marked “Return to Sender. No longer in custody.” (docket # 7)

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In view of Plaintiff’s failure to provide notice of his current address, the Court ordered
Plaintiff to show cause on or before February 5, 2010 why this matter should not be dismissed

1 without prejudice for failure to comply with the Local Rules and the Court’s order pursuant to
2 Fed.R.Civ.P. 41(b). (docket # 8) On January 25, 2010, the Order to Show Cause was returned
3 as undeliverable. (docket # 9) In view of Plaintiff’s failure to provide notice of his current
4 address, the Court will consider whether to dismiss this case.

5 Plaintiff has the general duty to prosecute this case. *Fidelity Philadelphia Trust Co. v.*
6 *Pioche Mines Consolidated, Inc.*, 587 F.2d 27, 29 (9th Cir. 1978). In this regard, a plaintiff who
7 has filed a *pro se* action must keep the Court apprized of his or her current address and comply
8 with the Court’s orders in a timely fashion. This Court does not have an affirmative obligation
9 to locate Plaintiff. “A party, not the district court, bears the burden of keeping the court
10 apprized of any changes in his mailing address.” *Carey v. King*, 856 F.2d 1439, 1441 (9th Cir.
11 1988). Plaintiff’s failure to keep the Court informed of his new address constitutes failure to
12 prosecute.

13 Rule 41(b) of the Federal Rules of Civil Procedure provides that “[i]f the plaintiff fails
14 to prosecute or to comply with these rules or a court order, a defendant may move to dismiss
15 the action or any claim against it.” In *Link v. Wabash Railroad Co.*, 370 U.S. 626, 629-31
16 (1962), the Supreme Court recognized that a federal district court has the inherent power to
17 dismiss a case *sua sponte* for failure to prosecute, even though the language of Rule 41(b) of
18 the Federal Rules of Civil Procedure appears to require a motion from a party. Moreover, in
19 appropriate circumstances, the Court may dismiss a complaint for failure to prosecute even
20 without notice or hearing. *Id.* at 633.

21 In determining whether Plaintiff’s failure to prosecute warrants dismissal of the case, the
22 Court must weigh the following five factors: “(1) the public’s interest in expeditious resolution
23 of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the
24 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the
25 availability of less drastic sanctions.” *Carey*, 856 F.2d at 1440 (quoting *Henderson v. Duncan*,
26 779 F.2d 1421, 1423 (9th Cir. 1986)). “The first two of these factors favor the imposition of
27 sanctions in most cases, while the fourth factor cuts against a default or dismissal sanction.
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1 Thus the key factors are prejudice and availability of lesser sanctions.” *Wanderer v. Johnson*,
2 910 F.2d 652, 656 (9th Cir. 1990).

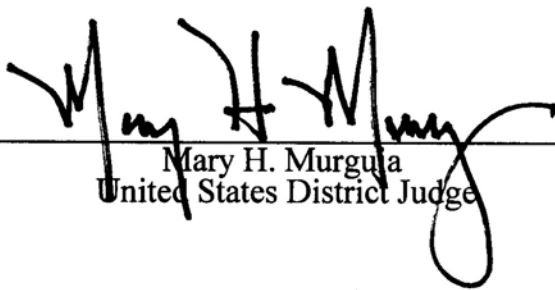
3 Here, the first, second, and third factors favor dismissal of this case. Plaintiff’s failure
4 to keep the Court informed of his address prevents the case from proceeding in the foreseeable
5 future. The fourth factor, as always, weighs against dismissal. The fifth factor requires the
6 Court to consider whether a less drastic alternative is available. The Court has already issued
7 an order to show cause which was returned as undeliverable. As the Court in *Carey* noted,
8 “[a]n order to show cause why dismissal is not warranted or an order imposing sanctions would
9 only find itself taking a round trip tour through the United States mail.” 856 F.2d at 1441.

10 The Court finds that only one less drastic sanction is realistically available. Rule 41(b)
11 provides that a dismissal for failure to prosecute operates as an adjudication upon the merits
12 “[u]nless the dismissal order states otherwise.” In the instant case, the Court finds that a
13 dismissal with prejudice would be unnecessarily harsh. The Complaint and this action will
14 therefore be dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil
15 Procedure.

16 Accordingly,

17 **IT IS HEREBY ORDERED** that, pursuant to Rule 41(b) of the Federal Rules of Civil
18 Procedure, this action is dismissed without prejudice and the Clerk of Court shall enter
19 judgment accordingly.

20 DATED this 23rd day of February, 2010.

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25 Mary H. Murgula
26 United States District Judge
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