

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

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

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

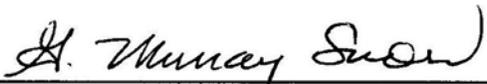
26 Here, the first, second, and third factors favor dismissal of this case. Plaintiff's failure
27 to keep the Court informed of his address prevents the case from proceeding in the foreseeable
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1 future. The fourth factor, as always, weighs against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

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

12 **IT IS THEREFORE ORDERED** that pursuant to Rule 41(b) of the Federal Rules of
13 Civil Procedure this action is dismissed without prejudice and the Clerk of the Court shall enter
14 judgment accordingly.

15 DATED this 22nd day of December, 2009.

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19 G. Murray Snow
20 United States District Judge
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