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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF ARIZONA**  
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9 Michael Aaron Cypert,

10 Plaintiff

11 v.

12 Charles L. Ryan, et al.,

13 Defendants  
14

No. CV-10-0878-PHX-GMS (JRI)

**ORDER**

15 Plaintiff filed a pro se Civil Rights Complaint pursuant to 42 U.S.C. § 1983 on April 20,  
16 2010 (Doc. 1), and a First Amended Complaint on May 14, 2010 (Doc. 9). In the Notice of  
17 Assignment (Doc. 2 ) entered and mailed to Plaintiff on April 20, 2010, Plaintiff was warned he  
18 must file a Notice of Change of Address if his address changes and that failure to comply would  
19 result in his case being dismissed. A similar provision was included in the initial screening Order  
20 issued May 4, 2020 (Doc. 7). It is assumed this Notice and order were received by Plaintiff as they  
21 were not returned as undeliverable.

22 The service Order, filed July 23, 2010 (Doc. 10) also directed that Plaintiff return completed  
23 service packets within twenty days. Plaintiff failed to do so, and on September 3, 2010, Magistrate  
24 Irwin gave Plaintiff fourteen days to either return completed service packets or show cause for his  
25 failure to do so. In response, on September 3, 2010 Plaintiff filed a Motion for Issuance of Another  
26 Service Packet (Doc. 12) and on September 9, 2010 a Notice to Resend Service Packets (Doc. 14),  
27 which were stricken for failure to comply with the form requirements for such filings. Plaintiff was  
28 again given fourteen days to comply with the Court's order. (*See* Order 9/10/10, Doc. 13; and Order

1 9/15/10, Doc. 15.) Plaintiff did not respond, and on October 22, 2010, Plaintiff was again warned  
2 of the consequences of failing to respond, and was given an additional fourteen days to respond to  
3 the order to show cause. (Order 10/22/10, Doc. 16.)

4 Plaintiff did not further respond, and on October 29, 2010, mail from the Court to Plaintiff  
5 was returned undeliverable (Doc. 17). Plaintiff has not filed a Notice of Change of Address

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

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

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

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

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

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

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

18 DATED this 18th day of November, 2010.

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22 G. Murray Snow  
23 United States District Judge  
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