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2 NOT FOR PUBLICATION

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

8 **Michael Aaron Cypert,**  
9 Plaintiff

-vs-

10 **Charles L. Ryan, et al.,**  
11 Defendants

CV-10-1076-PHX-GMS (JRI)

**ORDER**

12 Plaintiff filed a pro se Civil Rights Complaint pursuant to 42 U.S.C. § 1983 on May 17, 2010  
13 (Doc. 1). In the Notice of Assignment (Doc. 2) mailed to Plaintiff on May 18, 2010, Plaintiff was  
14 warned he must file a Notice of Change of Address if his address changes and that failure to comply  
15 would result in his case being dismissed. In an Order entered June 21, 2010 (Doc. 5), Plaintiff  
16 was cautioned that failure to immediately file a notice of change of address could result in  
17 the dismissal of the action for failure to prosecute pursuant to Rule 41(b) of the Federal  
18 Rules of Civil Procedure. It is assumed this Notice and Order were received by Plaintiff as they  
19 were not returned as undeliverable. However, the Court Order filed October 22, 2010 (Doc. 14)  
20 and the Court's Order to Show Cause filed December 2, 2010 (Doc. 18) were returned as  
21 undeliverable. Plaintiff has not filed a change of address. In addition, Plaintiff has failed to file a  
22 response to Defendants' Motion to Dismiss (Doc. 9), after his original response was stricken (*see*  
23 Order 9/20/10, Doc. 13), and the time to do so has expired

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

1 1988). Plaintiff's failure to keep the Court informed of his new address constitutes failure to  
2 prosecute.

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

10 In determining whether Plaintiff's failure to prosecute warrants dismissal of the case, the  
11 Court must weigh the following five factors: "(1) the public's interest in expeditious resolution of  
12 litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4)  
13 the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic  
14 sanctions." *Carey*, 856 F.2d at 1440 (*quoting Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir.  
15 1986)). "The first two of these factors favor the imposition of sanctions in most cases, while the  
16 fourth factor cuts against a default or dismissal sanction. Thus the key factors are prejudice and  
17 availability of lesser sanctions." *Wanderer v. Johnson*, 910 F.2d 652, 656 (9th Cir. 1990).

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

25 The Court finds that only one less drastic sanction is realistically available. Rule 41(b)  
26 provides that a dismissal for failure to prosecute operates as an adjudication upon the merits  
27 "[u]nless the court in its order for dismissal otherwise specifies." In the instant case, the Court finds  
28 that a dismissal with prejudice would be unnecessarily harsh. The Complaint and this action will

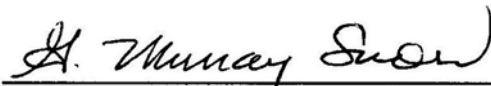
1 therefore be dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil  
2 Procedure.

3 **IT IS THEREFORE ORDERED** withdrawing the reference of this case to the magistrate  
4 judge.

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

8 **IT IS FURTHER ORDERED** denying Defendants' Motion to Dismiss (Doc. 9) as moot.

9 DATED this 3rd day of January, 2011.

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13 G. Murray Snow  
14 United States District Judge  
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