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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
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9 Shelby Johnathan Tapscott,  
10 Plaintiff,

11 v.

12 Officer Lavia, et al.,  
13 Defendants.  
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No. CV-14-00523-PHX-PGR (DKD)

**ORDER**

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16 Plaintiff, formerly an inmate at the ASPC-Florence, filed a *pro se* Prisoner Civil  
17 Rights Complaint pursuant to 42 U.S.C. § 1983 on March 13, 2014 (Doc. 1). The Court  
18 issued a Notice of Assignment on that date, a copy of which was mailed to Plaintiff, in  
19 which he was warned that failure to file a Notice of Change of Address could result in the  
20 case being dismissed (Doc. 4). The Court issued an order for payment of the inmate  
21 filing fee on April 14, 2014, and ordered Defendant Lavia to answer the Complaint  
22 (Docs. 5, 6). On April 21, 2014 and July 7, 2014, copies of the Court's April 13 and June  
23 30 Orders mailed to Plaintiff at his last known address were returned as undeliverable,  
24 indicating that Plaintiff was no longer in custody (Docs. 7, 9). Plaintiff has not filed a  
25 change of address.

26 Plaintiff has the general duty to prosecute this case. *Fidelity Philadelphia Trust*  
27 *Co. v. Pioche Mines Consolidated, Inc.*, 587 F.2d 27, 29 (9<sup>th</sup> Cir. 1978). In this regard, it  
28 is the duty of a plaintiff who has filed a *pro se* action to keep the Court apprised of his or

1 her current address and to comply with the Court's orders in a timely fashion. This Court  
2 does not have an affirmative obligation to locate Plaintiff. "A party, not the district court,  
3 bears the burden of keeping the court apprised of any changes in his mailing address."  
4 *Carey v. King*, 856 F.2d 1439, 1441 (9<sup>th</sup> Cir. 1988). Plaintiff's failure to keep the Court  
5 informed of his new address constitutes failure to prosecute.

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

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

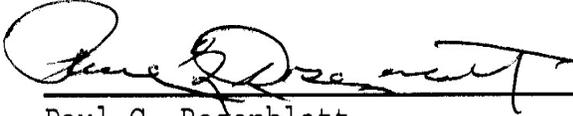
23 Here, the first, second, and third factors favor dismissal of this case. Plaintiff's  
24 failure to keep the Court informed of his address prevents the case from proceeding in the  
25 foreseeable future. The fourth factor, as always, weighs against dismissal. The fifth  
26 factor requires the Court to consider whether a less drastic alternative is available.  
27 Without Plaintiff's current address, however, certain alternatives are bound to be futile.  
28 Here, as in *Carey*, "[a]n order to show cause why dismissal is not warranted or an order

1 imposing sanctions would only find itself taking a round trip tour through the United  
2 States mail." 856 F.2d at 1441.

3 The Court finds that only one less drastic sanction is realistically available. Rule  
4 41(b) provides that a dismissal for failure to prosecute operates as an adjudication upon  
5 the merits "[u]nless the court in its order for dismissal otherwise specifies." In the instant  
6 case, the Court finds that a dismissal with prejudice would be unnecessarily harsh. The  
7 Complaint and this action will therefore be dismissed without prejudice pursuant to Rule  
8 41(b) of the Federal Rules of Civil Procedure.

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

12 Dated this 24th day of July, 2014.

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16 Paul G. Rosenblatt  
17 United States District Judge  
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