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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Annette Robledo,

10 Plaintiff,

11 v.

12 CEC Entertainment Incorporated, an
13 Arizona corporation doing business as
14 Chuck E. Cheese's, et al.,

Defendants.

No. CV14-1269 PHX DGC

ORDER

15 Plaintiff's counsel have moved to withdraw. Doc. 26. They advise the Court that
16 Plaintiff has stopped communicating with them and her location is now unknown. *Id.*
17 Counsel have tried communicating with Plaintiff by email, telephone, mail, through her
18 mother, and with the aid of a process server, all to no avail. *Id.* Plaintiff has failed to
19 cooperate with counsel in preparing for a settlement conference scheduled by the Court
20 for November 21, 2014. *See* Doc. 19.

21 Plaintiff has a general duty to prosecute this case. *Fidelity Philadelphia Trust Co.*
22 *v. Pioche Mines Consolidated, Inc.*, 587 F.2d 27, 29 (9th Cir. 1978). Rule 41(b) of the
23 Federal Rules of Civil Procedure provides that “[f]or failure of the plaintiff to prosecute
24 or to comply with these rules or any order of court, a defendant may move for dismissal
25 of an action.” In *Link v. Wabash Railroad Co.*, 370 U.S. 626, 629-31 (1962), the
26 Supreme Court recognized that a federal district court has the inherent power to dismiss a
27 case *sua sponte* for failure to prosecute, even though the language of Rule 41(b) appears
28 to require a motion. Moreover, in appropriate circumstances, the Court may dismiss a

1 complaint for failure to prosecute even without notice or hearing. *Id.* at 633.

2 In determining whether Plaintiff's failure to prosecute warrants dismissal, the
3 Court must weigh the following five factors: "(1) the public's interest in expeditious
4 resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice
5 to the defendants; (4) the public policy favoring disposition of cases on their merits; and
6 (5) the availability of less drastic sanctions." *Carey v. King*, 856 F.2d 1439, 1440 (9th
7 Cir. 1988) (quoting *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir.1986)). Here,
8 the first, second, and third factors favor dismissal. Plaintiff's failure to communicate
9 with her counsel and prepare for events scheduled by the Court prevents the case from
10 proceeding in the foreseeable future. The fourth factor, as always, weighs against
11 dismissal. The fifth factor requires the Court to consider whether a less drastic
12 alternative is available. Without Plaintiff's current address, however, certain alternatives
13 are bound to be futile. As in *Carey*, "[a]n order to show cause why dismissal is not
14 warranted or an order imposing sanctions would only find itself taking a round trip tour
15 through the United States mail." *Id.* at 1441.

16 The Court concludes that dismissal of this case under Rule 41(b) is appropriate.

17 **IT IS ORDERED:**

- 18 1. Counsel's motion to withdraw (Doc. 26) is **granted**.
- 19 2. Plaintiff's motion to vacate (Doc. 24) is **granted**. The settlement
20 conference set in this case for November 21, 2014 at 1:30 p.m. before
21 Judge John A. Buttrick is **vacated**.
- 22 3. Pursuant to Rule 41(b), this action is **dismissed**.
- 23 4. The Clerk shall enter judgment accordingly.

24 Dated this 17th day of November, 2014.

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27 _____
28 David G. Campbell
United States District Judge