

1 IN THE UNITED STATES DISTRICT COURT
2
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA

4
5 MELVIN DUKES,

No. C 09-02620 SBA (PR)

6 Plaintiff,

**ORDER DIRECTING PLAINTIFF TO
SHOW CONTINUED INTENT TO
PROSECUTE THIS ACTION**

7 v.

8 D. MILLER, et al.,

9 Defendants.

10 Plaintiff filed the instant pro se civil rights complaint under 42 U.S.C. § 1983 in the United
11 States District Court for the Eastern District of California, and in an Order dated June 9, 2009,
12 Magistrate Judge Gregory G. Hollows of the Eastern District transferred this action to this Court.¹
13 On June 12, 2009, the Clerk of the Court informed Plaintiff that this case had been transferred to the
14 Northern District.

15 Pursuant to Federal Rule of Civil Procedure 41(b), a district court may sua sponte dismiss an
16 action for failure to prosecute or to comply with a court order. See Link v. Wabash R.R., 370 U.S.
17 626, 633 (1962); McKeever v. Block, 932 F.2d 795, 797 (9th Cir. 1991). But such a dismissal
18 should only be ordered when the failure to comply is unreasonable. See id. A district court should
19 afford the litigant prior notice of its intention to dismiss. See Malone v. United States Postal Serv.,
20 833 F.2d 128, 133 (9th Cir. 1987).

21 In the instant case, Plaintiff has failed to communicate with the Court since this case has
22 been transferred to the Northern District. Furthermore, the June 12, 2009 notice was returned as
23 undeliverable on June 24, 2009 with a notation: "Return to Sender -- Inmate Refused."
24 Accordingly, it is in the interests of justice and judicial efficiency for the Court to establish whether
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27 ¹ Magistrate Judge Hollows indicated that he was construing Plaintiff's action as a civil rights
28 action, stating: "Because petitioner is challenging the conditions of his confinement, the court construes
this action as a civil rights action pursuant to 42 U.S.C. § 1983. (June 9, 2009 Order at 1 (citing
Ramirez v. Galaza, 334 F.3d 850 (9th Cir. 2003).)

1 Plaintiff intends to continue to prosecute this action. Plaintiff shall file a notice of his continued
2 intent to prosecute no later than **thirty (30) days** of the date of this Order. Failure to do so will
3 result in the dismissal of this action without prejudice for failure to prosecute under Rule 41(b) of
4 the Federal Rules of Civil Procedure. See Malone, 833 F.2d at 133 (the district court should afford
5 the litigant prior notice before dismissing for failure to prosecute).

6 IT IS SO ORDERED.

7 DATED: 9/4/09


SAUNDRA BROWN ARMSTRONG
United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MELVIN DUKES,

Plaintiff,

v.

D MILLER et al,

Defendant.

Case Number: CV09-02620 SBA

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 9, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Melvin Dukes D-33572
Salinas Valley State Prison (1050)
P.O. Box 1050
Soledad, CA 93960-1050

Dated: September 9, 2009

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk