

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

4  
5 MELVIN DUKES,

No. C 09-03643 SBA (PR)

6 Plaintiff,

**ORDER DIRECTING PLAINTIFF TO  
FILE A NOTICE OF INTENT TO  
PROSECUTE THIS ACTION**

7 v.

8 LIEUTENANT WARFIELD, et al.,

9 Defendants

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11 Plaintiff filed the instant pro se civil rights complaint under 42 U.S.C. § 1983 in the United  
12 States District Court for the Eastern District of California, and in an Order dated July 30, 2009,  
13 Magistrate Judge Dale A. Drozd of the Eastern District transferred this action to this Court. On  
14 August 12, 2009, the Clerk of the Court informed Plaintiff that this case had been transferred to the  
15 Northern District. On August 18, 2009, the Clerk sent Plaintiff another notice directing him to pay  
16 the filing fee or to file a completed in forma pauperis application.

17 Pursuant to Federal Rule of Civil Procedure 41(b), a district court may sua sponte dismiss an  
18 action for failure to prosecute or to comply with a court order. See Link v. Wabash R.R., 370 U.S.  
19 626, 633 (1962); McKeever v. Block, 932 F.2d 795, 797 (9th Cir. 1991). But such a dismissal  
20 should only be ordered when the failure to comply is unreasonable. See id. A district court should  
21 afford the litigant prior notice of its intention to dismiss. See Malone v. United States Postal Serv.,  
22 833 F.2d 128, 133 (9th Cir. 1987).

23 In the instant case, Plaintiff has failed to communicate with the Court since this case has  
24 been transferred to the Northern District. Furthermore, the August 12, 2009 notice was returned as  
25 undeliverable on August 20, 2009 with a notation: "Return to Sender -- Inmate Refused."  
26 Accordingly, it is in the interests of justice and judicial efficiency for the Court to establish whether  
27 Plaintiff intends to continue to prosecute this action. Plaintiff shall file a notice of his continued  
28 intent to prosecute no later than **thirty (30) days** of the date of this Order. Failure to do so will

1 result in the dismissal of this action without prejudice for failure to prosecute under Rule 41(b) of  
2 the Federal Rules of Civil Procedure. See Malone, 833 F.2d at 133 (the district court should afford  
3 the litigant prior notice before dismissing for failure to prosecute).

4 IT IS SO ORDERED.

5 DATED: 10/26/09

*Saundra B. Armstrong*  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

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

4 MELVIN DUKES,

5 Plaintiff,

6 v.

7 WARFIELD et al,

8 Defendant.

Case Number: CV09-03643 SBA

**CERTIFICATE OF SERVICE**

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

11 That on October 28, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
14 located in the Clerk's office.

15 Melvin Dukes D-33572  
16 Salinas Valley State Prison  
17 P.O. Box 1050  
18 Soledad, CA 93960-1050

19 Dated: October 28, 2009

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