

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

4
5 MELVIN DUKES,

No. C 09-03919 SBA (PR)

6 Plaintiff,

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

7 v.

8 LIEUTENANT WARFIELD, 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 August 19, 2009,
12 Magistrate Judge Craig M. Kellison of the Eastern District transferred this action to this Court. On
13 August 26, 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 August 26, 2009 notice was returned as
23 undeliverable on September 3, 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
25 Plaintiff intends to continue to prosecute this action. Plaintiff shall file a notice of his continued
26 intent to prosecute no later than **thirty (30) days** of the date of this Order. Failure to do so will
27 result in the dismissal of this action without prejudice for failure to prosecute under Rule 41(b) of
28

1 the Federal Rules of Civil Procedure. See Malone, 833 F.2d at 133 (the district court should afford
2 the litigant prior notice before dismissing for failure to prosecute).

3 IT IS SO ORDERED.

4 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.

WARFIELD et al,

Defendant.

Case Number: CV09-03919 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
P.O. Box 1050
Soledad, CA 93960-1050

Dated: September 9, 2009

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