

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MELVIN DUKES,

No. C 09-04223 SBA (PR)

Plaintiff,

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

V.

J. SELBIL, et al.,

## Defendants.

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Plaintiff filed the instant pro se civil rights complaint under 42 U.S.C. § 1983 in the United States District Court for the Eastern District of California, and in an Order dated August 25, 2009, Magistrate Judge Kimberly J. Mueller of the Eastern District transferred this action to this Court. On September 17, 2009, the Clerk of the Court informed Plaintiff that this case had been transferred to the Northern District.

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

In the instant case, Plaintiff has failed to communicate with the Court since this case has been transferred to the Northern District. Furthermore, the September 17, 2009 notice was returned as undeliverable on September 24, 2009 with a notation: "Return to Sender -- Inmate Refused." Accordingly, it is in the interests of justice and judicial efficiency for the Court to establish whether Plaintiff intends to continue to prosecute this action. Plaintiff shall file a notice of his continued intent to prosecute no later than **thirty (30) days** of the date of this Order. Failure to do so will result in the dismissal of this action without prejudice for failure to prosecute under Rule 41(b) of

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: 10/26/09

*Saundra B. Armstrong*  
5 SAUNDRA BROWN ARMSTRONG  
6 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 J SELBIL et al,

8 Defendant.

Case Number: CV09-04223 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  
Soledad, CA 93960-1050

18 Dated: October 28, 2009

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