

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

4
5 MELVIN DUKES,

No. C 09-04923 SBA (PR)

6 Plaintiff,

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

7 v.

8 LT. C. WARFIELD,

9 Defendant.

10
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 October 8, 2009,
13 Magistrate Judge John F. Moulds of the Eastern District transferred this action to this Court.¹ On
14 October 9, 2009, sent Plaintiff a copy of the October 8, 2009 Order. On October 21, 2009, this case
15 was transferred to the Northern District.

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

22 In the instant case, Plaintiff has not communicated with the Court since this case has been
23 transferred to the Northern District. Furthermore, the October 8, 2009 Order was returned as
24 undeliverable on October 30, 2009, with a notation: "Return to Sender -- Inmate Refused."
25 Accordingly, it is in the interests of justice and judicial efficiency for the Court to establish whether

26
27 ¹ Magistrate Judge Moulds indicated that he was construing Plaintiff's action as a civil rights
28 action, stating: "Plaintiff, a state prisoner proceeding pro se, has filed a civil action on the form for
filing a petition for writ of habeas corpus in a California state court. Upon review of the petition,
the court construes this action as a civil rights action pursuant to 42 U.S.C. § 1983." (Oct. 8, 2009 Order
at 1.)

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: 11/20/09


SAUNDRA BROWN ARMSTRONG
United States District Judge

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

4 MELVIN DUKES,

5 Plaintiff,

6 v.

7 D. MANTEL et al,

8 Defendant.

Case Number: CV09-04923 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 November 24, 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: November 24, 2009

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