

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

3 MELVIN DUKES,

No. C 09-04923 SBA (PR)

4 Plaintiff,

ORDER OF DISMISSAL

5 v.

6 LT. C. WARFIELD,

7 Defendant.
_____ /

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9 Plaintiff filed the instant pro se civil rights complaint under 42 U.S.C. § 1983 in the United
10 States District Court for the Eastern District of California, and in an Order dated October 8, 2009,
11 Magistrate Judge John F. Moulds of the Eastern District transferred this action to this Court. On
12 October 9, 2009, sent Plaintiff a copy of the October 8, 2009 Order. On October 21, 2009, this case
13 was transferred to the Northern District.

14 On October 30, 2009, Magistrate Judge Moulds's October 8, 2009 Order was returned as
15 undeliverable with a notation: "Return to Sender -- Inmate Refused."

16 In an Order dated November 20, 2009, this Court directed Plaintiff to inform the Court of his
17 continued intent to prosecute this action. The Court informed Plaintiff that if he failed to do so
18 within thirty days, this action would be dismissed without prejudice for failure to prosecute. The
19 Order was sent to Plaintiff at his last known address, Salinas Valley State Prison, and it was also
20 returned as undeliverable with a notation: "Return to Sender -- Inmate Refused."

21 A district court may sua sponte dismiss an action for failure to prosecute or to comply with a
22 court order pursuant to Federal Rule of Civil Procedure 41(b). See Link v. Wabash R.R., 370 U.S.
23 626, 633 (1962); McKeever v. Block, 932 F.2d 795, 797 (9th Cir. 1991). The court should consider
24 five factors before dismissing an action under Rule 41(b): (1) the public interest in the expeditious
25 resolution of the litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the
26 defendants; (4) the availability of less drastic sanctions; and (5) the public policy favoring the
27 disposition of actions on their merits. See Malone v. United States Postal Serv., 833 F.2d 128, 130

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1 (9th Cir. 1987).¹ The first three factors, above, weigh in favor of dismissal in light of the fact that
2 Plaintiff has not pursued this matter since it has been transferred to this district. In addition, by
3 refusing the aforementioned legal mail, Plaintiff is implicitly expressing his lack of intent to
4 prosecute this action. The fourth factor also weighs in favor of dismissal because less drastic
5 sanctions would have little impact in light of Plaintiff's apparent lack of interest in this case.
6 Although the fifth factor appears to weigh against dismissal, dismissal is appropriate in light of the
7 other four factors. See Pagtalunan v. Galaza, 291 F.3d 639, 643 (9th Cir. 2002) (finding district
8 court did not abuse its discretion in dismissing petition with prejudice where three of the five factors
9 weighed in favor of dismissal).

10 In light of the foregoing, this action is hereby DISMISSED for failure to prosecute, pursuant
11 to Federal Rule of Civil Procedure 41(b).

12 The Clerk of the Court shall close the file and terminate any pending motions.

13 IT IS SO ORDERED.

14 DATED: 12/16/09


SAUNDRA BROWN ARMSTRONG
United States District Judge

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26 ¹ The court should also afford the litigant prior notice of its intention to dismiss, id. at 133, as
27 this Court has done. While the Court's November 20, 2009 Order was returned as undeliverable, the
28 record shows that Plaintiff had actually refused to accept it, as mentioned above.

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MELVIN DUKES,

Plaintiff,

v.

D. MANTEL et al,

Defendant.

Case Number: CV09-04923 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 December 28, 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: December 28, 2009

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