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2
3 IN THE UNITED STATES DISTRICT COURT4
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA

6 ROBERT BEARD,

No. C 10-03837 SBA (PR)

7 Plaintiff,

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

8 v.

9 WARDEN HARRINGTON,

10 Defendant.
_____ /

11
12 Plaintiff filed the instant pro se civil rights complaint under 42 U.S.C. § 1983 as well as a
13 request for leave to proceed in forma pauperis. On October 27, 2010, the Court granted Plaintiff's
14 request for leave to proceed in forma pauperis, and the Clerk of the Court mailed a copy of the order
15 to Plaintiff. On November 10, 2010, Plaintiff's copy of the October 27, 2010 Order was returned as
16 undeliverable with a notation: "Return to Sender -- Inmate Refused."

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, mail sent to Plaintiff was returned as undeliverable with a notation:
24 "Return to Sender -- Inmate Refused." Accordingly, it is in the interests of justice and judicial
25 efficiency for the Court to establish whether Plaintiff intends to continue to prosecute this action.
26 Plaintiff shall file a notice of his continued intent to prosecute no later than **thirty (30) days** of the
27 date of this Order. Failure to do so will result in the dismissal of this action without prejudice for
28 failure to prosecute under Rule 41(b) of the Federal Rules of Civil Procedure. See Malone, 833 F.2d

1 at 133 (the district court should afford the litigant prior notice before dismissing for failure to
2 prosecute).

3 IT IS SO ORDERED.

4 DATED: 2/1/11


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 ROBERT BEARD,

5 Plaintiff,

6 v.

7 HARRINGTON et al,

8 Defendant.

Case Number: CV10-03837 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 February 2, 2011, 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 Robert Beard H-95755
16 Salinas Valley State Prison
17 P.O. Box 1020
18 Soledad, CA 93960

19 Dated: February 2, 2011

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