

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

4 JEFF WEAVER,  
 5 Plaintiff,

6 v.

7 STATE OF CALIFORNIA DEPARTMENT OF  
 8 CORRECTIONS, et al.,  
 9 Defendants.

No. C 11-00150 SBA (PR)

**ORDER DIRECTING PLAINTIFF TO  
 SHOW CONTINUED INTENT TO  
 PROSECUTE THIS ACTION AND TO  
 PROVIDE COURT WITH CURRENT  
 ADDRESS; AND GRANTING HIM AN  
 EXTENSION OF TIME TO FILE  
 OPPOSITION TO DEFENDANTS'  
 DISPOSITIVE MOTION**

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 11 Before the Court is Defendants' dispositive motion, which was filed on July 11, 2011. To  
 12 date, Plaintiff's opposition has not been filed, and it is overdue.

13 On August 12, 2011, Northern District Judge Jeremy Fogel issued an Order permitting  
 14 Plaintiff's former counsel, Richard Philip Sax, to withdraw appearance and granting a continuance to  
 15 enable Plaintiff to retain new counsel.

16 On September 28, 2011, this action was reassigned to the undersigned judge. The record  
 17 shows that Attorney Sax has "lost contact with Plaintiff." (Sax Decl. ¶ 4.) Furthermore, Plaintiff  
 18 has not yet retained new counsel nor has he updated his current address with the Court.

19 Pursuant to Federal Rule of Civil Procedure 41(b), a district court may sua sponte dismiss an  
 20 action for failure to prosecute or to comply with a court order. See Link v. Wabash R.R., 370 U.S.  
 21 626, 633 (1962); McKeever v. Block, 932 F.2d 795, 797 (9th Cir. 1991). But such a dismissal  
 22 should only be ordered when the failure to comply is unreasonable. See id. A district court should  
 23 afford the litigant prior notice of its intention to dismiss. See Malone v. United States Postal Serv.,  
 24 833 F.2d 128, 133 (9th Cir. 1987). Pursuant to Northern District Local Rule 3-11, a party  
 25 proceeding pro se whose address changes while an action is pending must promptly file and serve  
 26 upon all opposing parties a notice of change of address specifying the new address. See L.R. 3-  
 27 11(a). The Court may, without prejudice, dismiss a complaint or strike an answer when: (1) mail  
 28 directed to the attorney or the pro se party by the court has been returned to the court as not

1 deliverable, and (2) the court fails to receive within sixty days of this return a written  
2 communication from the attorney or pro se party indicating a current address. See L.R. 3-11(b).

3 In the instant case, Plaintiff has lost contact with his former counsel, who has since  
4 withdrawn from this action. Plaintiff has never directly communicated with the Court; therefore, he  
5 does not have an address on record. Accordingly, it is in the interests of justice and judicial  
6 efficiency for the Court to establish Plaintiff's current address and whether he intends to continue to  
7 prosecute this action.


8 In light of the foregoing, IT IS HEREBY ORDERED that Plaintiff shall file with the Court a  
9 notice of his current address and his continued intent to prosecute no later than **thirty (30) days**  
10 from the date of this Order. Failure to timely do so shall result in **dismissal of this action without**  
11 **prejudice** under Federal Rule of Civil Procedure 41(b).

12 IT IS ALSO HEREBY ORDERED that, if Plaintiff wishes to continue to prosecute this  
13 action, he is GRANTED an extension of time in which to file his opposition to Defendants'  
14 dispositive motion. The time in which Plaintiff may file his opposition to Defendants' dispositive  
15 motion will be extended up to and including **thirty (30) days** from the date he files the notice of his  
16 current address and his continued intent to prosecute. Defendants shall file a reply brief no later  
17 than **fifteen (15) days** after the date Plaintiff's opposition is filed.

18 The Clerk is directed to send a copy of this Order to Plaintiff's former counsel, Richard  
19 Philip Sax, at the Law Offices of Richard Sax, 448 Sebastopol Avenue, Santa Rosa, CA 95401. The  
20 Clerk is also directed to contact Attorney Sax at (707) 525-1824, to obtain Plaintiff's last-known  
21 address, and to send a copy of this Order to that address.

22 IT IS SO ORDERED.

23 DATED: 11/7/11

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

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**United States District Court**  
For the Northern District of California

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